

L3MPWEI1

Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

20-CR-188 (JSR)

5 RUBEN WEIGAND and
6 HAMID AKHAVAN,

7 Defendants.

Trial

8 -----x

9 New York, N.Y.

10 March 22, 2021
9:46 a.m.

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14
15 APPEARANCES

16 AUDREY STRAUSS

17 United States Attorney for the
Southern District of New York

18 BY: NICHOLAS FOLLY

TARA MARIE LA MORTE

EMILY S. DEININGER

19 Assistant United States Attorneys

20 DECHERT LLP

Attorneys for Defendant Weigand

21 BY: MICHAEL J. GILBERT

SHRIRAM HARID

22 ANDREW J. LEVANDER

STEPHEN PELLECHI

23 -and-

MICHAEL H. ARTAN

24 Attorney for Defendant Weigand

L3MPWEI1

Trial

APPEARANCES CONTINUED

QUINN EMANUEL URQUHART & SULLIVAN, LLP
Attorneys for Defendant Akhavan

BY: WILLIAM A. BURCK
CHRISTOPHER TAYBACK

SARA CLARK
MARI HENDERSON

DEREK SHAFFER
PAUL SLATTERY

-and-

ROTHKEN LAW FIRM LLP
Attorneys for Defendant Akhavan

BY: IRA P. ROTHKEN
JARED R. SMITH

L3MPWEI1

Trial

1 (Trial resumed; jury not present)

2 THE COURT: Good morning. Please be seated. The jury
3 is on their way up.

4 I understand there was a possible issue regarding some
5 video or something that has been resolved. Is there anything
6 else anyone needs to raise with the Court?

7 MR. TAYBACK: No, your Honor.

8 THE COURT: Very good.

9 MR. FOLLY: No, your Honor.

10 MR. ARTAN: No, your Honor.

11 THE COURT: Thank you.

12 THE DEPUTY CLERK: Jury entering the courtroom.

13 (Jury present)

14 THE COURT: Please be seated.

15 So, good morning, ladies and gentlemen. It's always a
16 pleasure to welcome back my favorite jury. We are about to
17 hear closing arguments of counsel. This will take basically
18 the whole day.

19 I want to caution you, though, that just as I told you
20 at the start of opening statements, nothing that counsel says
21 is itself evidence. The evidence came, as you know, from the
22 witnesses and the few exhibits and the occasional stipulations.

23 So why do we have closing arguments? Well, before you
24 decide what you think about the case, it may be helpful to hear
25 what the lawyers think about the case, what they think the

L3MPWEI1

Summation - Ms. LaMorte

1 government has proven or failed to prove, as the case may be.

2 Now, obviously, they're going to take very different
3 positions, but what is helpful is evaluating the strength of
4 the logic of their positions. The same is helpful to you in
5 your own deliberations.

6 Because the government has the burden of proof, as you
7 know, they get both an opening summation and also a brief
8 rebuttal summation at the end of the day.

9 And one last thing about that before we begin. While
10 counsel and I think we can get everything done by 3:45, if we
11 had to stay, like, 15 minutes later, would that be a problem
12 for anyone? Tomorrow, I know we have to -- you have to leave
13 at 3:30 because one of our jurors has a dental appointment; so
14 I don't feel too bad if we go 15 minutes later today.

15 Okay. Real good. We'll hear from the government.

16 MS. LA MORTE: May I?

17 THE COURT: Please.

18 MS. LA MORTE: Good morning, members of the jury. The
19 evidence has shown that the defendants, Ruben Weigand and Ray
20 Akhavan, told lies to get money. When my colleague,
21 Ms. Deininger, spoke to you at the beginning of this case, she
22 told you that the evidence would show that the defendants, Ray
23 Akhavan and Ruben Weigand, orchestrated a major scheme of
24 deception.

25 Well, the evidence is now all in, and you know what it

L3MPWEI1

Summation - Ms. LaMorte

1 shows. Over the course of years, these two men deployed lies
2 about merchants, lies about websites, lies about descriptors,
3 fake applications, fake business plans, fake customer service,
4 complicated cookie redirects. All of these lies, why? Ask
5 yourself: Why did they lie? They lied to trick people into
6 processing their transactions, Visa, MasterCard and U.S. banks.
7 The defendants lied to get money.

8 The banks were fooled into processing millions and
9 millions of dollars' worth of illicit card transactions. The
10 defendants they got their cut from their roles in the scheme to
11 defraud. That is what the evidence shows, and that's why we've
12 been here for the past three weeks. We have been here, ladies
13 and gentlemen, in extraordinary times, but the evidence shows
14 that, at bottom, this is a very ordinary fraud case. It's a
15 case about the lies the defendants perpetrated to get money.
16 That, ladies and gentlemen, is fraud.

17 In this summation I'd like to talk to you about four
18 things. First, we're going to talk about what's not really in
19 dispute in this case. The defendants orchestrated the Eaze
20 scheme, a massive transaction-laundering scheme designed to
21 make purchases of Eaze products appear to be purchases of
22 completely innocent things, such as green tea, face cream and
23 sheet music. The defendants' goal? To trick the Eaze
24 customer's banks, banks located here in the United States, to
25 authorize the transactions and release the funds so the

L3MPWEI1

Summation - Ms. LaMorte

1 defendants can take their cut of it.

2 Now, for this scheme to work, lies had to be told
3 every step of the way, to every participant in the payment
4 processing system, including Visa, MasterCard and those U.S.
5 banks. It cannot work any other way. The plan does not work
6 without pushing lies through the system. So I'll walk through
7 the evidence on that.

8 Second, we'll talk about the key role that these two
9 men, Ray and Ruben, played to make the Eaze scheme work and all
10 the reasons that you know that they intended to deceive the
11 card networks and U.S. banks so that the Eaze transactions
12 could be approved. We'll look at their actions, their words,
13 their lies, all the work that they put in to avoid being
14 detected.

15 And third, we'll talk a little bit more about the
16 single charge in this case, conspiracy to commit bank fraud,
17 and how each and every element of that charge is proven beyond
18 a reasonable doubt.

19 And finally, we'll talk a little bit more about the
20 element of materiality. Would a reasonable banker want to know
21 that they were being asked to authorize elicited purchases, or
22 would they just not care about being lied to over and over and
23 over again? This is really a matter of common sense, but we'll
24 look at the evidence on that point, too.

25 So let's turn to the Eaze transaction-laundering

L3MPWEI1

Summation - Ms. LaMorte

1 scheme. On the screen in front of you, you have Ray's words.
2 "There is no way all these people can pull this off and we
3 can't. With our brain trust, we should be way ahead of
4 everybody else." Ray was right. He and Ruben were
5 sophisticated businessmen who orchestrated a sophisticated
6 scheme, a massive scheme that they perpetrated for three years
7 to the tune of over \$150 million worth of concealed and illicit
8 transactions.

9 So we all know the backdrop. Eaze was a U.S.-based
10 company selling marijuana products. It didn't want to continue
11 to accept cash only. It wanted to be able to accept debit and
12 credit cards, but there was a problem with that. Visa,
13 MasterCard and many U.S. banks don't allow their cards to be
14 used for the purchase of marijuana because the sale of
15 marijuana is illegal under federal law.

16 Enter the defendants. To be clear, the defendants,
17 they weren't involved in the marijuana industry. They had no
18 affiliation with Eaze. No, these men were involved in the
19 business of bank fraud, and a number of witnesses told you
20 their knowledge of the payment processing industry was
21 impressive. They were experts in high-risk industries and the
22 ins and outs of the global payment processing system.

23 And Eaze? Well, Eaze just happened to be their
24 client. Ray and Ruben offered Eaze a solution to the company's
25 legal problems with accepting credit and debit cards, and that

L3MPWEI1

Summation - Ms. LaMorte

1 solution was to commit bank fraud.

2 In the government's opening statement, Ms. Deininger
3 told you how the defendants ran this scheme step by step. And
4 what does the evidence show? Lies at every step of the
5 process. Lies to every single participant. Lies every step of
6 the way. We're going to follow those lies through the payment
7 processing system from the acquiring bank on the left of your
8 screen, through to Visa and MasterCard, and finally to the U.S.
9 issuing banks. And then we're going to follow the money that
10 comes back.

11 So let's overview the four steps of the Eaze
12 transaction-laundering scheme, which we will go through in
13 detail. Step one, purchase shell companies with no connection
14 to Eaze; step two, use those shell companies to open fraudulent
15 bank accounts with foreign acquiring banks; step three, use the
16 shell companies' accounts to secretly funnel through Eaze
17 transactions; and step four, get that money, get that money
18 from the U.S. banks back to the depots or the marijuana
19 dispensaries.

20 So let's start with step one. The defendant arranged
21 to purchase shell companies with no connection to Eaze. What
22 is a shell company? Well, remember Oliver Hargreaves? He told
23 you what a shell company is. It's a company on paper, no
24 employees, no operations, no services, nothing. Paper only.
25 No relation to Eaze.

L3MPWEI1

Summation - Ms. LaMorte

1 Now, Ray hired Oliver Hargreaves for this purpose, to
2 get the shell companies and to create fraudulent websites. And
3 as Hargreaves explained to you, his team could purchase those
4 shell companies from a shell company provider. Companies for
5 sale, just like goods at Target. And this line that you see
6 here is an e-mail from Oliver Hargreaves to jawbreaker13, which
7 we know is Ray, where he talks about: We can provide 80 EU
8 companies by the second week of April 2018. See, 11,250 Euros
9 per company per year. Companies on paper for purchase.

10 So again, the critical point with the shell companies
11 is that they had nothing to do with Eaze, nothing to do with
12 marijuana, nothing to do with the United States, nothing. So
13 that's step one.

14 Step two. Defendants used those shell companies to
15 open bank accounts with foreign merchant acquiring banks. So
16 you see the four-party model on your screen, which we're all
17 familiar with. And the shell company accounts were opened at
18 the foreign merchant acquiring banks, which you see circled on
19 your screen.

20 So why use a foreign acquiring bank and not a bank in
21 the United States? Well, Ray told you the answer to that.
22 U.S. banks, they didn't want to touch this stuff. Here's an
23 e-mail from Ray to people at Eaze, and he says: We would love
24 to move it to the States, as I have my own billing company here
25 in Florida that I'd really like to use, but none of the U.S.

L3MPWEI1

Summation - Ms. LaMorte

1 banks want to touch it. And then later on: It's just not
2 worth the risk for a bank when there are so many other
3 high-risk businesses, which don't pose legal obstacles for
4 them.

5 Now, the evidence shows that Ray and Ruben had some
6 dirty inside help at these foreign banks to help get these
7 fraudulent merchant applications approved. They had
8 connections with high-level bank officials. For example, we
9 heard from Hargreaves about Ray and Ruben's relationship with
10 high-level people at Wirecard and E-Comprocessing. And we saw
11 a bit of that in the Telegram chats.

12 These high-ranking bank officials helped the
13 defendants get the fraudulent applications through the bank's
14 compliance department review. Fake account applications full
15 of lies. And ladies and gentlemen, the lies were blatant.

16 Now, I'd like to focus on four lies in particular.
17 Take a look at what's on your screen. You have a Wirecard
18 foreign bank account application on your left, made out in the
19 name of the shell company. You see it's Linebeck Limited,
20 located in the UK. Object of the business, custom skincare
21 products, and the URL to be Organikals.store. This is one of
22 the shell companies, Linebeck Limited.

23 And now there are four lies, four key lies that I want
24 to focus on in particular, merchant name, merchant location,
25 merchant category, and merchant descriptor. So let's take a

L3MPWEI1

Summation - Ms. LaMorte

1 look: Merchant name, false. The merchant name on here is not
2 Eaze; it's Linebeck Limited.

3 Merchant location, false. The merchant location is
4 nothing in the United States but in Manchester in the UK.

5 Merchant activity, which translates into an MCC code,
6 false. Not anything on any of these applications pertaining to
7 cannabis or anything related. Instead, we have custom skincare
8 products.

9 And fourth, merchant descriptor, false. Eaze.com
10 isn't on here anywhere. Instead, we see Organikals.store.

11 These four lies are found in every single fraudulent
12 application submitted to every single one of the foreign
13 acquiring banks. No mention of Eaze whatsoever, no mention of
14 Eaze.com, no mention of Eaze's true U.S. location, no mention
15 of Eaze's actual business.

16 So why am I asking you to focus on these four lies?
17 As we're about to see, the evidence shows you that these four
18 lies were critical. These four lies made their way from the
19 foreign acquiring banks to Visa and MasterCard and finally to
20 those issuing banks in the United States. So that's step two,
21 open foreign merchant processing accounts in the name of shell
22 companies, with a bunch of lies.

23 So now, let's go to step three. What's step three in
24 the process? Now, what we're going to do is use the shell
25 company accounts at the foreign merchant acquiring banks to

L3MPWEI1

Summation - Ms. LaMorte

1 secretly funnel through the Eaze transactions, disguising them
2 in the network.

3 Here on your slide you have testimony that was
4 provided to you by Oliver Hargreaves. He was asked:

5 "Now, based on your participation in the scheme, what
6 transactions were intended to be run through this Hot Robots
7 merchant processing account?

8 "A. Transactions made on the Eaze website."

9 This was true for every single one of the shell
10 companies that was opened at the foreign acquiring banks, to
11 secretly funnel through Eaze transactions.

12 Let's go to the next slide. And what do we have here?
13 Here, what we're looking at is EUprocessing telling people from
14 Eaze about these fake or shell processing account. So look, we
15 have an e-mail here from EUprocessing to Michael Tassone and
16 John Wang. You heard from both of them at this trial.

17 "Hi, Michael; hi, John. A new processing channel has
18 been opened by the bank today." Account name? K-NewOpPearl
19 USD. So let's look at this chart. If we look at the first
20 line, the first column, actually, those are the marijuana
21 dispensaries associated with Eaze, Caliva, Hometown, Perennial,
22 et cetera, and each of those is linked to one of the shell
23 merchant processing accounts.

24 Look at the top line, Caliva. Caliva, the marijuana
25 dispensaries, selling its product through the Eaze website,

L3MPWEI1

Summation - Ms. LaMorte

1 linked to the NewOpal, shell company merchant processing
2 account. Look at the one below, Hometown Heart, another
3 marijuana dispensary linked to the processing account Linebeck.

4 So remember, the four lies passing through the system,
5 merchant name, merchant business, merchant location, billing
6 descriptor. Because of that, because of those four lies, the
7 defendants at Eaze knew that U.S. banks would not be told
8 truthful information about the transactions, but that the lies
9 would be passed to them through the system, lies from these
10 fraudulent shell company accounts.

11 And so Eaze told its customers that credit and debit
12 purchases through its website were going to show up as
13 something completely different. Let's look at what you have on
14 your screen now. On the left we see Government Exhibit 686.
15 That's a receipt for the purchase of a product, a marijuana
16 product, through the Eaze website. And what's being told to
17 the customers? You will see a charge, on the right-hand side
18 of the slide, from Soniclogistix for \$57.51 on your statement.
19 That's because lies are being passed to the U.S. issuing banks.
20 That's why this is appearing on their statement, and that's
21 exactly what happened.

22 So let's go back to the slide with the four-party
23 model. Again, I want to focus on the four key lies that were
24 used to disguise the Eaze transactions and that made their way
25 through the payment processing system, false merchant name,

L3MPWEI1

Summation - Ms. LaMorte

1 false descriptor, false merchant location, false merchant
2 activity or MCC.

3 When the Eaze card transactions got up and running,
4 these four lies flowed from the foreign acquiring bank housing
5 the shell company accounts, through the credit card networks
6 and then finally to the U.S. issuing banks. How do you know
7 this? The witnesses told you that and the records prove it.

8 Ladies and gentlemen, look on your screen now. This
9 is an excerpt from MasterCard data pertaining to transactions
10 in the MasterCard systems. Look at this, ladies and gentlemen.
11 What you're looking at are the lies. These are the disguised
12 Eaze transactions in MasterCard and Visa's systems. So let's
13 take a quick look at a couple.

14 You can see, going down, Organikals.store, about a
15 third of the way down. Merchant category code, 5977. Merchant
16 category name, cosmetic stores. Organikals.store is the lie.
17 The merchant category number, cosmetic stores, is the lie. The
18 location in the UK is the lie. All of those are lies. These
19 are the lies. This is what disguised the Eaze transactions,
20 and this is telling you that these lies, these are the lies
21 that MasterCard sees. These lies are in the MasterCard
22 systems.

23 Let's go to the next slide.

24 And again, same thing with Visa. We have all the U.S.
25 issuing banks on the left, and this is in the excerpt.

L3MPWEI1

Summation - Ms. LaMorte

1 Merchant name, Eaze isn't there. Soniclogistix,
2 Goodegreenbazaar, none of this is Eaze. Merchant country, not
3 the United States; it's the United Kingdom. Merchant category
4 code, again, we see music store pianos, miscellaneous food,
5 motor freight carriers. Lies. These are the lies that made
6 their way into Visa's system.

7 And if you take a look at the bottom one, highlighted,
8 here is an example from Actors Federal Credit Union. And now,
9 if we look, here we have a U.S. bank, Actors, and this is a
10 credit card statement for a particular customer. That lie that
11 we just saw in Visa's records is right here on the customer's
12 Actors credit card receipt. Look at the blow-up on the bottom.
13 October 11th, 2018, Soniclogistix.com, a phone number, GB,
14 which Actors told you is Great Britain.

15 Again, ladies and gentlemen, these are the lies. The
16 lies that the defendants passed to MasterCard and Visa and
17 finally to the U.S. banks. And you know what they tell us?
18 They tell us that those U.S. banks approved those transactions
19 based on false information. So that's step three, secretly
20 funnel through the Eaze transactions disguised as something
21 else.

22 And the last step, step four, get the money from those
23 U.S. banks back to the marijuana dispensaries in the United
24 States.

25 So now, we just saw that the four lies, the four key

L3MPWEI1

Summation - Ms. LaMorte

1 lies, were passed to Visa and MasterCard and then the U.S.
2 issuing banks for authorization. What happened next? Well,
3 that's where the money starts flowing. The witnesses explained
4 this to you, how the money flow works for a credit and debit
5 transaction.

6 Here's an excerpt from when Chuck Brown, from Actors,
7 testified for you. He explained: The settlement process
8 happens once a day, and the payment network is in charge.
9 They're in charge of deducting the funds, in this case, from
10 our settlement account at our corporate credit union and
11 depositing it into the acquirer's settlement account, which
12 might be at the Federal Reserve at our headquarters.

13 Question: So you mentioned that the funds are
14 deducted from "our settlement account;" is that an account held
15 by Actors?

16 Yes.

17 Now, of course, the defendants, they needed to take
18 their cut of that money. That's why they orchestrated the
19 scheme in the first place. So they took out their cut of the
20 proceeds sent by these U.S. issuing banks, and then wired the
21 rest of the money to the U.S. dispensaries.

22 Look on your screen now. This is during the
23 Clearsettle days, when Clearsettle was the processor in this
24 scheme. Initially, Ray charged 8.75 percent per transaction.

25 You see on your right the settlement statement for

L3MPWEI1

Summation - Ms. LaMorte

1 Sweetwood, one of the dispensaries. Gross amount at the top is
2 the total amount of the transaction \$15,000 worth of
3 transactions for that one week, and you see card rate, sort of
4 at the bottom row, 8.75 percent. For one week, \$1,321, that's
5 what the defendants charged. That's what was taken out.

6 And on the left, you see Craig Wald from Sweetwood
7 talking about this 8.75 percent fee. It's on the gross,
8 including refund and bank fees. When we drill down to the
9 various costs per transaction, it gets interesting.

10 Now, later on, ladies and gentlemen, when EUprocessing
11 became the processor, the defendants jacked up that fee to
12 12 percent, and that's what's reflected here on one of the
13 statements sent from EUP back to the dispensaries. Look here,
14 we see the deductions that are blown up. Rate, 12 percent.
15 The highest percent of deductions taken from this money is the
16 money that the defendants charged, the fee, for coordinating
17 these transactions.

18 Now, of course, Ray and Ruben, they were careful about
19 how they did this. They made sure that those U.S. dispensaries
20 held their U.S. bank accounts in deceptive names, in names that
21 could not be traced to marijuana. Why? Well, they told you.
22 If the cannabis connection was discovered, the money would stop
23 flowing.

24 So what do we have here? Here, we have e-mails
25 between EUprocessing and people from Eaze. Taking a look at

L3MPWEI1

Summation - Ms. LaMorte

1 the e-mail on the left, EUP notes at the bottom that there are
2 problems with the account for from The Earth Ventura, a
3 marijuana dispensary. We have the same issue, the payments to
4 the bank account holders will be declined by the bank.

5 Eaze's response? Apologies on this. Attached is an
6 updated application with a different management entity. I have
7 Googled search and did not find anything related to cannabis.
8 Please let us know if this will suffice.

9 On the right-hand side, Government's Exhibit 650, this
10 is EUP's response: Thank you for your e-mail. This is exactly
11 what needs to be proved. The legal entity, which will receive
12 payments from the bank, need not -- needs to be neutral, not
13 having any relations to dot, dot, dot.

14 So, ladies and gentlemen, what was the goal of the
15 Eaze transaction-laundering scheme? Simple. It was to get
16 money, and to do that, the defendants needed to trick the U.S.
17 issuing banks into approving the transactions, and that, ladies
18 and gentlemen, is bank fraud.

19 So those are the four steps. That's how the
20 defendants pumped the lies through the system.

21 Now, as I said before, for this scheme to work, the
22 defendants needed to trick every entity involved in the payment
23 processing system. Why? Choke points. Detection at any one
24 of these points could shut the entire operation down. The plan
25 doesn't work without lies and concealment and the defendants

L3MPWEI1

Summation - Ms. LaMorte

1 knew it.

2 So now, I want to walk you through the evidence
3 showing you how the defendants orchestrated this scheme and
4 deceived the U.S. banks into processing over \$150 million worth
5 of secretly disguised Eaze transactions.

6 So as numerous witnesses in this trial told you, Ray
7 started the scheme with Clearsettle. Now, looking at your
8 slide, Clearsettle, the Clearsettle phase of the scheme
9 occurred between 2016 and 2017. And what you're looking at is
10 a picture of Ray Akhavan and Ozan Ozerk, who you may remember
11 from testimony, was the CEO of Clearsettle at the time.

12 Now, Clearsettle was hatched in the United States
13 between Ray and Keith McCarty, who was a former CEO of Eaze.
14 In this e-mail between Ray and Keith, here Ray is speaking: It
15 will all be up and running shortly. I was with the banks all
16 week, and they're good to go, which is the only real obstacle.

17 Everyone knew that Ray was in charge of the scheme.
18 You heard this from John Wang, who testified: He was the main
19 person behind Ray's processing. Michael Tassone: I understood
20 him to be leading the process. And Jim Patterson, the former
21 CEO:

22 "Q. To your knowledge, who was in charge of the Clearsettle
23 operation?

24 "A. It was Ray."

25 That makes sense. Ray had the knowledge, and Ray had

L3MPWEI1

Summation - Ms. LaMorte

1 the connections. Here, Ray is explaining to Eaze the different
2 fraudulent websites that were used during the Clearsettle
3 operation and their purpose. And one of those is
4 Onlinebiller.net. Do you guys remember Onlinebiller.net? This
5 is where the deceptiveness began.

6 Onlinebiller.net was one of the first fraudulent
7 descriptors that was used in the transaction-laundering scheme.
8 Jim Patterson, the CEO of Eaze, explained to you that Ray
9 deployed this deceptive tactic to shield the Eaze scheme from
10 being revealed. Here's what he says:

11 "Q. What was your understanding as to why the Onlinebiller.net
12 domain was used to send receipts, as opposed to the Eaze
13 domain?

14 "A. So that that there was -- so that there was no connection
15 between Eaze and the credit card processing."

16 They wanted to hide it. They wanted to hide it
17 because they knew it was wrong.

18 And Michael Tassone, he was one of the first
19 witnesses -- he was the first witness in this trial that you
20 heard from, and he told you that this fraudulent descriptor was
21 designed to discourage Eaze customers from calling their U.S.
22 banks to complain, which could also lead to discovery of the
23 scheme.

24 Now, the Clearsettle operation was lucrative. In the
25 course of roughly a year, the Eaze dispensary partners

L3MPWEI1

Summation - Ms. LaMorte

1 processed over \$40 million worth of transactions. Remember the
2 fee charged by the defendants, 8.75 percent? It's over \$4
3 million. But it wasn't enough.

4 So you might remember that Jim Patterson, the former
5 CEO, and Michael Tassone told you that by early 2018, the
6 Clearsettle operation went down. Ray wanted to expand the
7 operation, make it better and more lucrative. He went so far
8 as to threaten Jim Patterson for exploring other processors.
9 Here's what Ray said: "I see you're processing with others
10 while I pay for your merchants. Get ready to get fucked.
11 You're in deep shit." This was not a joke. This was a serious
12 threat. Ray wanted this business for himself. He wanted the
13 money.

14 So what did he do? Well, Ray was involved in all
15 facets of this operation, and so he brought in the experts. He
16 brought in Christian Chmiel, the owner of Webshield. Do you
17 remember Webshield? He worked for MasterCard. That's known in
18 the industry. It's a software that's intended for acquiring
19 banks to screen merchants for fraud, to identify fraud.

20 Ray turned it around. He used Chmiel and he used
21 Webshield to perpetrate his fraud and make it more effective.
22 Ray also hired Oliver Hargreaves and his team -- not depicted
23 on here -- who had experience in transaction-laundering
24 schemes, to do the grunt work, prepare the fraudulent
25 application packs, and the fake websites, complete with the

L3MPWEI1

Summation - Ms. LaMorte

1 fake clips.

2 And ladies and gentlemen, Ray brought in Ruben
3 Weigand, the European banker with the foreign bank connection.
4 Ruben's role? He was the banker and the money mover. Now,
5 we're going to spend some time looking through the evidence of
6 what Ruben did. You might remember during opening statements,
7 that Mr. Gilbert told you that Ruben wasn't focused on Eaze at
8 all. Nonsense.

9 Instead of what the lawyers are saying now, let's look
10 at what Ray told Eaze at the time of the scheme when he
11 introduced Ruben to Eaze. Ray told Eaze that Ruben's role was
12 to interface with the foreign banks. Here we go. Government
13 Exhibit 302, a Telegram chat. Ray invites Ruben W. This is a
14 Telegram chat with Ray, Ruben, other people from Eaze.

15 Look on the bottom. Ray says: Martin and Ruben have
16 both agreed to be actively involved with helping us out.
17 Martin is handle all reporting and reconciliation; and Ruben,
18 Ruben is interfacing with the banks. You all met Ruben in LA,
19 and Martin will be out soon hopefully as well.

20 It doesn't get much clearer than that, ladies and
21 gentlemen.

22 The evidence also shows you that Ruben was tasked to
23 manage the money in this operation. How do we know that?
24 Well, it's all on his computer. Ruben controlled the
25 distribution of money from the issuing banks back to the U.S.

L3MPWEI1

Summation - Ms. LaMorte

1 depots. Ruben maintained settlement statements, application
2 forms, supplier statements on his computer. He maintained
3 spreadsheets of his and Ray's cut of the money. The money part
4 of this scheme is all on Ruben's computer, and we will look at
5 the evidence of that.

6 Now, let's talk about the hatching of the EUP phase of
7 this scheme. This phase of the conspiracy was also hatched in
8 the United States. There were two key sets of meetings in
9 early 2018. Both were at Ray's office in Calabasas. Both
10 involved sketching out the entire crime on a white board and
11 both involved Ruben.

12 So let's start with the January 2018 Calabasas
13 meeting. Look at what's on your slide here. We have Ray and
14 Ruben and another individual in Calabasas in January 2018. On
15 the right-hand side, that's Guy Mizrachi, and behind him, the
16 white board. And remember what Oliver Hargreaves told you
17 about what was on that white board? It was the entire scheme.
18 The entire scheme, ladies and gentlemen, on the white board.
19 "A. It's a flow diagram depicting the flow of the
20 transaction-laundering scheme.

21 "Was this discussed during the meeting?

22 "Yes, it was."

23 Ladies and gentlemen, this is the evidence. The
24 scheme is literally sketched out on this white board, courtesy
25 of Ray. What this tells you is that these people, Ray, Ruben,

L3MPWEI1

Summation - Ms. LaMorte

1 Oliver Hargreaves, they all planned for this to happen. They
2 intended for this to happen. They all knew exactly what was
3 going on.

4 Now, let's go to the next meeting in Calabasas. This
5 is now March of 2018. Planning of the conspiracy, part two.
6 Again, meeting at Ray's office in Calabasas. This time it's
7 Ray, Ruben, who comes in late, Jim Patterson, CEO of Eaze,
8 Darcy Cozzetto, Eaze employee, and the heads of the various
9 marijuana dispensaries.

10 Now, let's look at what Jim Patterson says about this
11 meeting:

12 "Q. Was this meeting the same or different than other business
13 meetings you had attended in the past?

14 "A. Different.

15 "Q. How so?

16 "A. Well, I would say the -- just the fact that there was
17 laying out a very clear criminal conspiracy on a white board is
18 just not something I've ever experienced in the past."

19 Again, the entire scheme laid out on a white board.
20 You know what else is the same besides that white board? Ruben
21 was there, too. He was there with Ray at this meeting.

22 Now, before we get there, let's talk a little bit more
23 about what happened at this meeting. Follow the lies and
24 follow the money.

25 Okay. So this is what Jim Patterson relates happened

L3MPWEI1

Summation - Ms. LaMorte

1 at this meeting. So he, meaning Ray, started by just talking
2 generally about how the credit card money flowed. So starting
3 with the credit card owner and the issuing banks in the United
4 States, money would then flow to the merchant banks that he
5 worked with in Europe, and then from there, the money would
6 come back to the United States to be deposited into the
7 dispensary's bank accounts.

8 So he talked about the money flow, and then he talked
9 specifically how, in this case, the merchant bank accounts that
10 were being set up were not going to be in the dispensaries'
11 names. They couldn't be because Visa and MasterCard didn't
12 allow for marijuana transactions. He was going to take care of
13 that part of it.

14 Follow the lies and follow the money.

15 Now, as I said, Ruben was there, too. He was there
16 with Ray in that meeting in Calabasas with Eaze and the
17 dispensaries, where this scheme was planned. Ruben was there
18 with the insiders when they met to plan this conspiracy and he
19 was also there when it was planned with Eaze. Ruben was there
20 every step of the way.

21 So can we go back one slide? Here we go.

22 Here is a Telegram chat between Ray Akhavan and others
23 at Eaze, including Ruben, and he says: We went over this.
24 Martin and Ruben have both agreed to be actively involved with
25 helping us out. You all met Ruben in LA.

L3MPWEI1

Summation - Ms. LaMorte

1 Next slide. And we also know, if you look on the
2 right, this is a stipulation or an agreement between the
3 parties. Weigand traveled from Germany, Frankfurt, Germany, to
4 Los Angeles on March 14th, 2018, and returned from Los Angeles
5 to Frankfurt on April 1st, 2018.

6 On the left-hand side, Patterson told you that: Nick
7 Fasano said that Ray's German's banker showed up. I took that
8 to mean Ruben. Ruben was there. So, ladies and gentlemen, EUP
9 took over, and the scheme became even more deceptive, more
10 sophisticated and more lucrative.

11 Let's look at this slide. On the left-hand side you
12 see the descriptors that were used in the scheme,
13 HappyPuppyBox, TheHiddenKitten, Soniclogistix, feel-kvell. And
14 let's look at what Patterson says on cross-examination about
15 these descriptors. Question, on cross: "Was it your
16 understanding -- was it ever your understanding that a goal of
17 the descriptor is to make the customer be able to recognize a
18 transaction?

19 "A. Yes. That's the goal of the descriptor, but just not in
20 this case, wasn't the goal of the descriptors."

21 What was the goal here? What was the goal of the
22 descriptors? Not to help out the customers in identifying
23 their purchase. It was to deceive, hear the lie, to make sure
24 that the banks, Visa and MasterCard, didn't figure this out.

25 And look what Oliver Hargreaves told you on

L3MPWEI1

Summation - Ms. LaMorte

1 cross-examination. This was true on the back end as well:

2 "Q. And is it your understanding that when you came up with
3 Greenteacha and Goodegreenbazaar, Organikals, that those were
4 referencing marijuana?

5 "A. No. Greenteacha was tea.

6 "Q. But wasn't the purpose to remind the customer of what it
7 was they bought?

8 "A. No. At this point, we were way beyond that being
9 possible."

10 (Continued on next page)

L3MHWEI2

Summation - Ms. La Morte

1 MS. LA MORTE: (Continued) In the EUP days this
2 deceptive scheme was even more lucrative. Remember the fee?
3 Now we're at 12 percent.

4 Go forward.

5 Here we see the total amount processed during the
6 Euprocessing period of the scheme, over \$108 million. The
7 12 percent fee? That amounts to over \$15 million. A lot of
8 money.

9 Now, when you go back and you deliberate in that jury
10 room, one question you will need to ask -- need to answer is
11 what did Ray and Ruben intend? Did Ray and Ruben intend to lie
12 in order to get U.S. banks to approve the transactions and
13 release the funds? The evidence provides an obvious answer.
14 Yes, yes, they did. Take your pick: sketching out the scheme
15 on the whiteboard twice, fake merchants, shell companies, fake
16 websites, fake traffic clicks, fake descriptors, chargeback
17 obsession, Ruben's lies to law enforcement after he was
18 arrested. You can really take your pick, but for now I'm going
19 to focus on just a few of the key reasons that you know, you
20 know, that Ray and Ruben intended to commit this crime.

21 First, the lies. We already spent a lot of time going
22 through the evidence proving all the lies that were involved in
23 this conspiracy, lies told at every level to every participant
24 in the scheme; lies that Ray, Ruben, and Hargreaves plotted out
25 in Calabasas; lies Ray and Ruben explained to Eaze later on in

L3MHWEI2

Summation - Ms. La Morte

1 the second meeting in Calabasas. Those lies are critical
2 because they prove that the defendants knew what they were
3 doing was wrong when they did it.

4 And, ladies and gentlemen, Ruben knew this was all a
5 sham. He helped launch this scheme. He traveled to the United
6 States twice to map out this operation. He met with Oliver
7 Hargreaves, on the one hand, and met with EU merchants, on the
8 other, Eaze and the dispensaries, to plot this out. And as you
9 will see in a few moments, he and Ray worked from all angles to
10 do everything possible to avoid getting caught.

11 And as for those lies, is Ruben played an extremely
12 critical role. You know what he did? Ladies and gentlemen,
13 Ruben is the one that introduced the lies into the payment
14 processing system. Ruben, the banker and the money mover.
15 Ruben reviewed the fraudulent application packs prepared by
16 Hargreaves and his team. Ruben chose the banks that those fake
17 applications were going to. Ruben submitted those applications
18 with the lies to those banks. Ruben corresponded with those
19 banks. Ruben got the money, money sent by those U.S.-issuing
20 banks, and sent it back to the dispensaries in the United
21 States. And Ruben, Ruben, worked directly with Eaze.

22 So what are we looking at here? We're looking at
23 email from Oliver Hargreaves to Jawbreaker, who's Ray, and he
24 says: I have forwarded Ruben three complete app packs, meaning
25 fraudulent application packs for Eaze, containing three

L3MHWEI2

Summation - Ms. La Morte

1 companies and six websites. Again, Oliver Hargreaves is
2 sending the fraudulent application packs to Ruben to review.

3 Next slide.

4 And here we go. Here's Ruben on the left. This is a
5 Telegram chat that's in evidence. Kate Farmer, who you may
6 remember was on Oliver Hargreaves team:

7 Hi Ruben, can you confirm which banking details we use
8 for the eCom apps, fraudulent applications packs? Mr. Tango
9 or Swiss?

10 Ruben responds: All Mr. Tango.

11 And then he says: Please don't send to Gotthardus but
12 to Euprocessing. As soon as you have them, we'll submit.

13 And then Kate confirms that she sent the Wirecard apps
14 to him now. And on the right we see Kate sending email to
15 Ruben at Euprocessing talking about these applications.

16 Next slide.

17 Again, Ruben submitted these fraudulent application
18 packs. On the left we have a Telegram chat between Ruben and
19 Ray. Government Exhibit 4004 is the Olliebaba chat.

20 Ray said: Ruben, why were the Hot Robots app
21 submitted to Wirecard? I thought only the three other ones got
22 submitted.

23 Ruben: All four at the same time. He submitted the
24 packs.

25 On the right-hand side, there's more.

L3MHWEI2

Summation - Ms. La Morte

1 Ray said: What about the other three corps and packs?
2 Where are you with those? Why can't we submit them to Wirecard
3 and Kalixa? Ruben, ????

4 And then Ruben says: We'll submit all we have, of
5 course.

6 Here, we also note that one of Ruben's roles was to
7 interface with those banks and receive feedback. Here's an
8 email between Kate Farmer, Oliver Hargreaves, and the team.
9 Look at the bottom line: Bank details to be supplied by Ruben.
10 Have stated to be supplied for now.

11 Here's another example of Ruben interfacing with the
12 merchant banks. Kate, in this Olliebaba chat, writes:

13 Can I check if you have any comments or amendments on
14 the completed Wirecard forms we have sent through. We are
15 holding off securing wet signatures until we have your
16 confirmation and would like to proceed soonest.

17 Ruben's response: Hey, am checking with the bank.

18 And one more between Ray and Ruben on a Telegram chat
19 at Olliebaba, and actually Oliver Hargreaves is in the green
20 comments. Ray tells Oliver Hargreaves: Ruben said that all
21 four were sent to Kalixa. Please confirm with who? With
22 Ruben.

23 Ray says: We can't be off on our knowledge.

24 Oliver Hargreaves responds: I will check with Ruben.
25 The advice we gave is based on the forms we filled out and

L3MHWEI2

Summation - Ms. La Morte

1 forwarded to Ruben.

2 Ray writes: I know. I just want to make sure we get
3 it right. There's only you and Ruben, so it shouldn't be that
4 hard.

5 Then Oliver Hargreaves writes: Ruben, call me when
6 you see this.

7 And here we have Ruben discussing descriptors. Ray
8 writes Ollie: Ruben is asking about the descriptors.

9 And then Ruben: What about those descriptors,
10 medical-stf or medical-dsr? And says: They are set up at the
11 bank. Because Ruben is the one that's interfacing with the
12 banks. Ruben is the bank guy. Ruben is the money mover.

13 And last one. This is a ProtonMail that's sent to
14 Euprocessing from Kate Farmer. Let's look at the bottom. This
15 is an email from Euprocessing: Hey KF, the volumes are not
16 acceptable, as both banks complain about it. And then he goes
17 on: All the best, Ruben. Ruben is the one that's dealing with
18 the banks.

19 Now, Ruben also is the one who is responsible for
20 sending proceeds from the U.S.-issuing banks back to the
21 marijuana dispensaries in the United States. Here's again
22 Olliebaba. Ray is wiring Bank of America wiring instructions
23 in this chat, and he writes: Payout information for clean
24 consulting company for Natoma sub-merchants. Natoma was one of
25 the marijuana dispensaries in the scheme.

L3MHWEI2

Summation - Ms. La Morte

1 Then Ray says: That's three, three out of three of
2 our merchants I've talked to so far, and they all have clean
3 payout info and can take euros.

4 Ruben responds: Can you shoot this to EUP?

5 And finally, Ruben worked directly with Eaze. Here's
6 an example. John Wang talked to you about this. John Wang --
7 on the left-and side is a Telegram chat involving John Wang,
8 people at Eaze, Ruben and Wang.

9 Wang writes: Conal said the accounts are configured
10 to euros instead of U.S. dollars. Can we ask the bank to
11 change them to U.S. dollars?

12 And he's writing to Ruben, and Ruben responds: John,
13 I was asked about this on the stand. Here's what he was asked:

14 "Q. Why were you asked to change this?

15 "A. Because our customers are in the United States, and they
16 expected to be able to process in U.S. dollars.

17 "Q. Who were you directing this message at?

18 "A. Ruben.

19 "Q. Why did you direct this to Ruben?

20 "A. Because he was the main interface with the banks."

21 And last, we also heard about a telephone call between
22 Ruben and John Wang who worked at Eaze. On the left is the
23 Telegram chat log or message log which shows you the telephone
24 calls, and on the top is Ruben Weigand and John Wang talking
25 about calling one another. John Wang was asked about this

L3MHWEI2

Summation - Ms. La Morte

1 call:

2 Who participated in the call?

3 Ruben W. and myself. Which topics did you discuss?

4 We talked about which dispensaries should be tied with
5 which merchant accounts based on transaction and limit volumes.

6 Ruben worked with the money, he worked with the banks,
7 and he worked with Eaze. He knew exactly what was going on.

8 Ruben also knew when Mastercard discovered the lies in
9 this scheme. You may recall hearing from Mastercard, as well
10 as Visa, that they discovered that they were fake merchants
11 going through the system and that these merchants were really
12 disguised marijuana transactions. So look at the left. The
13 left is an email from Andrea Bricci at PXP Financial, formerly
14 known as Kalixa, one of the merchant acquiring banks of the
15 scheme. She's writing to Mastercard and writing about
16 merchants that they discovered and terminated and says at the
17 bottom: These merchants have been referred to us by an ISO,
18 Esepa. If you go back and look at the fraudulent applications
19 in this scheme, these same applications, the ISO referenced on
20 those applications is this ISO, Esepa. That's on April 26.

21 Then on April 28, two days later, after this email,
22 Euprocessing writes: Hi John, to John Wang as Eaze. I guess
23 you weren't informed about the Mastercard issues. Please
24 disable the Mastercard processing for this channel as well.

25 Then on the bottom, a few days later, we have a

L3MHWEI2

Summation - Ms. La Morte

1 Telegram message found on Ruben's computer between Ruben and
2 Andrea Bricci, that woman from PXP Financial, and she's would
3 ask him for that Mastercard case for Esepa asking for the list
4 of additional merchant accounts who were involved in this
5 scheme.

6 Ladies and gentlemen, as I mentioned before, this
7 scheme, this scheme is found on Ruben's computer all -- much of
8 the evidence of this scheme is also all located on Ruben's
9 computer. On the left you have a Telegram chat in which Eaze
10 forwarded an E.zip folder. "E" obviously stands for Eaze. On
11 the right we see the substructure of what's in that folder. We
12 see Kalixa; International Standard, one of the shell company
13 merchants; Johnson NYC, shell company; Linebeck, shell company,
14 New Opal, shell company, all found on Ruben's computer.

15 Other things as well. So on the left-hand side of the
16 screen, we have email correspondence between Euprocessing and
17 John Wang. And on the bottom what we have are various
18 marijuana dispensaries and the different names that they use
19 because, remember, for their bank they needed a name to use
20 that was not traceable to marijuana. This is sent to
21 Euprocessing. Look on the right side. Look what's found on
22 Ruben's computer. And you remember that Ruben's computer, when
23 Jessica Volchko testified on the stand, stuff was downloaded
24 from ProtonMail. Look on the right, the same type of
25 information found exactly on Ruben's computer.

L3MHWEI2

Summation - Ms. La Morte

1 Here as well, this is an example, on the left of
2 Government Exhibit 3940, ProtonMail from Oliver Hargreaves for
3 the particular application. On the right-hand side, we see the
4 application, and that application, ladies and gentlemen, same
5 exact application found on Ruben's computer. The scheme was on
6 Ruben's computer.

7 Here's another example. Remember I told you that
8 Ruben was the money mover; he was the one that got the money
9 from the U.S.-issuing banks and then sent it back to the
10 dispensaries after taking their cut? Left-hand side is the
11 settlement statement. This settlement statement was sent from
12 EUP, Government Exhibit 485, to Michael Tassone. This is
13 CLMSS. We learned that that's a shell name for a marijuana
14 company called -- actually not remembering the name -- one of
15 the marijuana companies. Twelve percent fee taken out.

16 Settlement statement on the right, Government
17 Exhibit 1801, found on Ruben's computer, same company, same
18 time period, same amount.

19 We also see these Webshield reports. We talked
20 briefly about Webshield and how that's a product that acquiring
21 banks are intended to use to screen for fraud, but how in this
22 scheme it was used to perpetrate the fraud. Webshield,
23 Webshield reports that were created by Oliver Hargreaves using
24 the software found on Ruben's computer.

25 This was also found on Ruben's computer. It's not

L3MHWEI2

Summation - Ms. La Morte

1 just the money, it's the fact that everything is being run
2 through shell companies. Look on the left-hand side you see
3 the shell companies that we're familiar with: Lorry Limited,
4 Johnson, International Standard. The address of those
5 companies, not the United States, the UK. The URLs associated
6 with these companies, ones we are now all familiar with:
7 Greenteacha, SonicLogistix, Organikals. The descriptors,
8 customer service numbers, and MCC codes -- again, all the lies,
9 all the lies that were used to perpetrate this scheme, all
10 found on Ruben's computer.

11 OK. So now let's turn to Ray. As the leader of the
12 transaction laundering scheme, Ray, of course, was the primary
13 driver of the operation. Now, ladies and gentlemen, when you
14 go back into the jury room, I urge you to look at Government
15 Exhibit 4004. That's the Olliebaba chat. It's long. It's
16 like 108 pages long, but it's literally a running narrative of
17 the crime spearheaded by Ray. It tells you almost everything
18 that you need to know about what Ray and Ruben did to
19 perpetrate this massive fraud and how they pulled it off.

20 But even beyond the lies and beyond that, I want to
21 take a few moments reviewing with you some of Ray's own words,
22 his own admissions, which also tell you everything that you
23 need to know.

24 Ray, Ray was trying to pull one over on the banks.
25 There's no better window into someone's mind than what they

L3MHWEI2

Summation - Ms. La Morte

1 said at the time. If you look at your -- Ray here orchestrated
2 the massive operation, and he knew that it was a fraud. So
3 let's take a look at this.

4 All right. So this is Jim Patterson, CEO of Eaze, on
5 direct, and he's talking about the second Calabasas meeting
6 that he attend and what happened there.

7 He says: Yes, so he, referring to Ray, showed me an
8 article that they were looking at. It was about a bank being
9 under investigation by the FBI. He said that that was one of
10 his banks, and he said that, you know, basically, every
11 three-letter agency is after me, again in a joking, bragging
12 kind of way.

13 Next slide. Darcy confirmed this. Darcy Cozzetto was
14 also at the meeting. She said: He, referring to Ray,
15 mentioned that he was already on the federal government's
16 radar.

17 And here's what else Darcy Cozzetto said, which is
18 telling as to Ray's intent. Here's what Ray said at that
19 second Calabasas meeting: He told us that everyone in the room
20 should understand that there was a risk to the solution he was
21 presenting. He was pretty confident that for everyone that
22 wasn't him, the risk was pretty low. I remember him talking
23 about, on a scale of 1 to 10, we, Eaze, would be more on the
24 one side; he, Ray, more on the upper 8, 9, or 10 side. My
25 understanding was he was referring to the risk of getting

L3MHWEI2

Summation - Ms. La Morte

1 caught, the risk of, you know, working in an illegal
2 environment.

3 Ladies and gentlemen, Ray knew that what he was doing
4 was a crime. He just didn't think that he was going to get
5 caught.

6 Here's another example that's a window into Ray's
7 thinking. So this is Government Exhibit 302, which is one of
8 the Telegram chats involving Ray, Ruben, and various
9 individuals from Eaze. And in this exchange, Ray is talking
10 about talking to Eaze about Eaze's effort to start up
11 processing with a U.S. processor which, as you know, failed
12 because none of the U.S. processors would do it. But in any
13 event, here's what Ray says in highlights: If possible, you
14 guys should do what you did with us, which is everyone fills
15 out and submits a 100 percent accurate app on the depot side,
16 but then some middleman changes or alters it so no one could
17 say that Eaze or the depots miscoded knowingly.

18 Ladies and gentlemen, Ray's basically -- Ray has
19 admitted that the scheme he is pulling off with Eaze is a
20 miscoding scheme. He knows about the lies. This is the
21 admission. Just like we are doing, he says, so you can have
22 plausible deniability and claim that you're not miscoding
23 knowingly. This is his admission of guilt. He just didn't
24 think he was going to get caught.

25 And look at this: Now, this is after there's a

L3MHWEI2

Summation - Ms. La Morte

1 lawsuit, you may recall, where a competitor of Eaze sued Eaze
2 for these deceptive practices. And this is a Telegram exchange
3 found on Ruben's computer involving Guy Mizrachi, Ray's
4 business partner, and Ruben. So this is what happens after
5 that lawsuit's filed.

6 Guy: The truth is we moved Ray's shares from Ray to
7 his asset protection trust, to protect his businesses from
8 lawsuits like Eaze so Eaze no longer on -- in control "on
9 paper."

10 Guy: I asked Ray yesterday, and he said, What
11 government's going to trace that shit? acting like it's not
12 possible.

13 But I think everything goes --

14 Ruben: I think everything goes worse when he has
15 money.

16 Guy: Why isn't Jan or Henry say to him: Bro, you
17 can't take that money. It belongs to our merchants, and we'll
18 get fucked if you do?

19 Ruben: They are gutless. H says that he doesn't
20 care.

21 Ladies and gentlemen, if he didn't do anything wrong,
22 if Ray didn't know that he did anything wrong, why are his
23 assets being moved to a trust in the Cook Islands? Because he
24 knows he did something wrong, and now there was a chance that
25 he was going to get caught.

L3MHWEI2

Summation - Ms. La Morte

1 All right. Let's talk about avoiding getting caught
2 because Ray and Ruben took a number of measures, significant
3 efforts, significant time to avoid getting caught.

4 Here we go. This is what Ray says in that Olliebaba
5 chat: The bank, Visa, and Mastercard do tests and mystery
6 shopping, so we need to be careful of them.

7 They knew that these entities -- Visa, Mastercard, and
8 banks -- could uncover and expose the scheme. So they took
9 every measure that they possibly could to avoid that.

10 Here we go, measure one: Fake websites and fake
11 clicks. Here is Ray explaining to Eaze about the fraudulent
12 website. This is in the Clearsettle days, the fraudulent
13 website that was used was Webconsultations. Here's what he
14 says about this fraudulent website, Ray to Eaze:

15 The Webconsultations page is super critical as that is
16 the website on file with the bank, which means Visa and
17 Mastercard monitor it. We absolutely cannot ever mess or
18 change that page in any way. It has very strict compliance
19 issues and is currently compliant. So please, please make sure
20 no one ever messes with that page, as it must stay compliant
21 and functioning. If that site goes down or is broken for any
22 reason, it will blow up the entire project.

23 Again, they know they are fooling and tricking Visa,
24 Mastercard, and the banks, and here is their effort to ensure
25 that they are not discovered by those entities.

L3MHWEI2

Summation - Ms. La Morte

1 Now, here is Oliver Hargreaves. He comes in during
2 the EUP time, and he's the one that prepares the fraudulent
3 websites.

4 Ray says: Ollie, I showed the site to everyone and
5 every likes it a lot.

6 Later on: Just a few quick things we need to fix
7 ASAP.

8 Then later he says: Ollie, please stick a few more
9 "order now" buttons on it. Notice it has very little sales
10 push, which is unlike most real sites.

11 Again, these are fraudulent websites that are designed
12 to look as real as possible in order to fool Visa, Mastercard,
13 and the banks.

14 Ruben was involved in this too. Here's an Olliebaba
15 chat between Ruben and Ray, and they're talking about what are
16 called price points. So the prices, they wanted the prices on
17 the fraudulent websites for the fraudulent products to roughly
18 match the prices that are on the Eaze website. So here's what
19 they're discussing.

20 Ruben's input: Wouldn't allow below \$10.

21 Oliver says: OK.

22 Ray says: Yeah, but it's not up to what we allow,
23 it's up to the products Eaze sells.

24 Again, fraudulent websites being made to be as real
25 looking as possible in order to trick the card companies and

L3MHWEI2

Summation - Ms. La Morte

1 the banks.

2 And aside from having these fraudulent websites made
3 to look as real as possible, they even went so far as to
4 generate fake traffic clicks on these websites, again, to make
5 them look real to avoid getting caught.

6 So on the right, Telegram exchange Olliebaba chat,
7 Ollie says, Oliver Hargreaves says: We started pushing traffic
8 to the matcha site last night.

9 Ray says: Amazing what's the domain?

10 www.greenteacha.com.

11 Ollie, Oliver Hargreaves, is asked about these traffic
12 clicks. Here's what he says. He's asked about how he did it:

13 We contracted a service provider that had a roomful of
14 people that would literally visit the website and do it a lot,
15 and it would create the appearance of a website that has a lot
16 of visitors and therefore is justified that the website is
17 turning over a lot of money on a monthly basis.

18 Again, look at the levels that this group went to to
19 avoid getting caught.

20 Chargebacks, another way to avoid getting caught or
21 another way that they didn't want to get caught. So this group
22 Ray, Ruben, they were obsessed with chargebacks. They related
23 that to Eaze. Here's what Jim Patterson said on cross: Well,
24 I think the obsession was around keeping chargebacks low.

25 Telegram exchange between Ray and Ruben, Ray on the

L3MHWEI2

Summation - Ms. La Morte

1 bottom: These idiots don't know that they're creating
2 chargebacks, but we do, Ruben.

3 So why was this a concern? Why were chargebacks such
4 a concern in this scheme? Again, because if there are
5 chargebacks, there is a real risk that the banks and Visa and
6 Mastercard would find out what the defendants were doing, that
7 they were disguising the Eaze transactions. Jim Patterson
8 explained this to you on direct:

9 "Q. What is your understanding of why it's important that they
10 not escalate the complaint to their bank?"

11 This is talking about customers who received their
12 billing statement from the bank, something like Greentecha,
13 and don't recognize it. So they're going to call their
14 U.S.-issuing bank to figure out what's going on. So why is
15 this important?

16 "A. At some point Ray said that the reason was that if a
17 customer complained to their bank, as part of that interaction,
18 they could mention they bought cannabis on their credit card.
19 If they said that to their bank, then the bank could reach out
20 to Visa or Mastercard, and that could cause the account to be
21 under investigation.

22 "Which banks did you understand Ray to be referring to when
23 Eaze referring to customers complaining to their banks?

24 "The card-issuing banks, so the banks in the United States
25 where the customers have their credit card accounts."

L3MHWEI2

Summation - Ms. La Morte

1 Ruben too was obsessed with chargebacks. Here's an
2 email from Euprocessing to John Wang and Michael Tassone at
3 Eaze. Let's look at the part in yellow: In general, our goal
4 should be to keep the chargeback ratio under 1 percent and,
5 more important, to stay below 70 chargebacks or even below 60
6 within one channel, meaning one account.

7 Then he says: You need to improve the performance.
8 This is at the bottom of the email. Billing descriptor
9 communication. Are you guys notifying the credit cardholder
10 about the description of the card on the credit card statement?
11 Customer support, incoming calls.

12 And that's what Eaze did. Eaze takes their direction
13 from the defendants. Ray and Ruben made significant efforts to
14 avoid chargebacks because they knew the customers would not
15 recognize the descriptors on their credit card statements and
16 might call their banks which could expose the scheme.

17 Here again we have the receipt on the left which
18 you've already seen before, an Eaze receipt, and this is just
19 an example of various excerpts from these Eaze receipts telling
20 the customers: You're going to see a charge for Happypuppybox,
21 DiverKingdom, Starstyles, Absolut soda, SonicLogistix. Again,
22 they're doing everything they can to avoid having the Eaze
23 customers in the United States call those U.S.-issuing banks
24 because that would expose the scheme.

25 And another measure that the defendants took to avoid

L3MHWEI2

Summation - Ms. La Morte

1 getting caught: customer service. Customer service was vital,
2 as Ray and Ruben recognized. Ray says on the left in this
3 Olliebaba chat: Ruben, Eaze is saying the numbers aren't
4 working, the ones we put up, and they want those forwarded to
5 their own customer service numbers. Do you have that, and is
6 that in progress, brother?

7 Again, the concern is people are confused by their
8 credit card statements and don't recognize the charge, and they
9 try to call customer service and don't get anyone. What's
10 their next call going to be? To their U.S.-issuing bank to
11 dispute the charge.

12 On the right, this is now Ray talking to Eaze. Mick
13 Frederick is one of the customer service people at Eaze, and
14 he's explaining to them why this is so important with customer
15 service. Ray says -- this is interesting -- And it's critical
16 that they don't answer, meaning the Eaze customer service,
17 saying it's Eaze. They have to be generic and say that they
18 are a CS center for many companies. Ask for the person's info
19 to pull them up. Once you see that they're a legit Eaze
20 customer, they can be transferred and dealt with as Eaze but
21 not before.

22 Why is that? Why does Eaze's customer service have to
23 verify it's an Eaze customer before saying that they're Eaze
24 customer service? Ray tells you at the very bottom: The bank,
25 Visa, and Mastercard do tests and mystery shopping, so we have

L3MHWEI2

Summation - Ms. La Morte

1 to be careful. You have to be careful because it could be
2 someone from Visa making that call, trying to figure out what
3 this transaction is, and so you have to determine, Eaze, that
4 they are real customer before you let on that you are, in fact,
5 the Eaze company. Again, avoiding getting caught.

6 Then we have this Pixel redirect. This is another way
7 to avoid Visa, Mastercard, and the banks, mystery shopping, and
8 Jim Patterson, explained to you how had worked. Eaze was a
9 complicated, technical project. So if you're an Eaze customer
10 and you get your receipt, it says Happypuppybox, and you go to
11 Happypuppybox, the system will know that you're an Eaze
12 customer, and you'll be transferred to Eaze site. You won't go
13 to Happypuppybox. But if you're not an Eaze customer, if you
14 want and you just found Happypuppybox or if you're a Visa or
15 Mastercard or mystery shopping and you type in Happypuppybox,
16 you're not going to be redirected to the Eaze site. You're
17 going to be directed to Happypuppybox. So, again, this is an
18 effort to avoid having Visa, Mastercard, and banks discover
19 that they're really dealing with Eaze. Ray explains this again
20 in this chat, which is the Eaze customer service chat.

21 He says: Also, we have a really cool trick with
22 cookies. We cookie the users when they sign up on Eaze, and
23 when those users go to the customer service URLs in the
24 descriptor, they will see Eaze; whereas if anyone else goes
25 there -- read Mastercard, Visa, the bank -- they just see the

L3MHWEI2

Summation - Ms. La Morte

1 normal page, ha, ha, ha, ha.

2 Now, let's look at the final set of lies. That's
3 Ruben postarrest. You heard that tape in evidence during this
4 trial. Ruben lied to law enforcement when he was arrested, and
5 that is a real window into his thinking. He lied because he
6 was covering it up and he knew he did wrong, and he knew what
7 he did was a crime. So here are the lies.

8 FBI: You heard about the company -- and this is taken
9 from the transcript -- and then take me through your
10 involvement and what happened there.

11 Ruben Weigand: I have no involvement. I just --

12 FBI: You have no involvement with Eaze?

13 Weigand: No.

14 Ladies and gentlemen, that's ridiculous. We just went
15 through a mountain of evidence showing that Ruben was very much
16 involved in Eaze. He lied to the government. He lied when he
17 was arrested. He lied because he knows he's guilty.

18 Here, here's about the EUP email address.

19 Ruben says: It's not my email address.

20 FBI: Whose is it? You've never heard of it? Have
21 you ever heard of it?

22 Ruben: I might have heard of it.

23 FBI: Yeah. Exactly, man, you've heard of it.

24 Then at the bottom we see an email from Euprocessing,
25 signed "All my best, Ruben." And on the right you see Ruben

L3MHWEI2

Summation - Ms. La Morte

1 telling Oliver Hargreaves: Please don't send to Gotthardus but
2 to Euprocessing. As soon as we have them, referring to
3 fraudulent application packs, we'll submit.

4 Ladies and gentlemen, maybe that wasn't -- maybe Ruben
5 did not own that EUprocessing address, but he clearly used it,
6 he clearly controlled it, he clearly knew everything that was
7 going there. He monitored it. He lied again to the FBI to
8 cover himself up.

9 Now, you know what else, ladies and gentlemen, the
10 people, the people that Ray and Ruben worked with to operate
11 this scheme, people that you've heard from in this case, they
12 all knew, all of them got up there and told you that what they
13 were doing was wrong. They all got up there, each one of them,
14 and told you that they were passing lies to Visa, Mastercard,
15 the banks. All of them, all of them, told you that they were
16 doing that to disguise the Eaze transactions so that the U.S.
17 banks would approve them.

18 These witnesses, they played different roles in the
19 conspiracy. Hargreaves, who pled guilty to bank fraud and
20 money laundering for this case, was in Europe. Jim Patterson,
21 who also pled guilty to conspiring to commit bank fraud in this
22 case, was the former CEO of Eaze in the United States. Wang,
23 John Wang, admitted that what he was doing was wrong. He was
24 the tech guy. Darcy said she thought she was committing bank
25 fraud. She was the vice president. And Tassone, too, knew

L3MHWEI2

Summation - Ms. La Morte

1 that lies was being passed through the system. He was dealing
2 with communications from the marijuana dispensaries. They all
3 knew. All these different people playing different roles in
4 the operation, they all knew, they all knew what they were
5 doing was wrong.

6 So let's take a look:

7 Mr. Hargreaves, do you understand that passing lies to
8 banks is wrong, is that right?

9 Yes, I do.

10 And in this case, you pled guilty to bank fraud and
11 money laundering in connection with the Eaze scheme, is that
12 right?

13 Yes.

14 Hargreaves is based in Europe.

15 Next, Jim Patterson:

16 "Q. Why did you decide to start cooperating with the
17 government at that time?

18 "A. Because I knew what we had done was wrong, and I didn't
19 want to pretend otherwise."

20 On cross:

21 "You believed as of 2018 you were involved in bank fraud?

22 "A. Yes."

23 Wang, John Wang, the tech guy, he said, he testified:
24 I knew what we were doing was wrong on some way, misleading
25 Visa and Mastercard.

L3MHWEI2

Summation - Ms. La Morte

1 Tassone, Michael Tassone, the first witness you heard
2 from:

3 Mr. Tassone, you understood that lying to banks was
4 wrong, correct?

5 Yes, I did.

6 And the scheme that you engaged with Ray Akhavan,
7 there were misrepresentations made to banks, is that correct?

8 Yes, that's correct.

9 Cozzetto, Darcy Cozzetto:

10 During the time period, did you participate in a
11 scheme to process Eaze credit and debit card payments?

12 Yes.

13 In that scheme was the information used to process the
14 card transactions truthful?

15 Answer: No.

16 She's asked on cross:

17 Now, is it true that the time that you worked at Eaze,
18 during that time, you didn't believe you were committing bank
19 fraud?

20 Answer: She writes from what I recall, I -- I did
21 think that we were committing bank fraud.

22 Ladies and gentlemen, all the people in this scheme,
23 they all knew it was wrong. They all knew they were lying to
24 banks and credit card companies.

25 So, ladies and gentlemen, who are you going to

L3MHWEI2

Summation - Ms. La Morte

1 believe? The words of the defense lawyers created after they
2 began representing the defendants, or the words of the
3 defendants themselves when they were planning and carrying out
4 this scheme, their words and the words of their coconspirators?

5 And let's not forget about why the defendants did
6 this: money. We saw direct evidence of that right on Ruben's
7 computer, and here we have two slides, both taken from Ruben's
8 computer. The one on the left, on the top, showing commissions
9 earned by Ruben from Esepa, which, if you remember, was the ISO
10 used in the scheme. The one on the right, in the 2019 box,
11 that pertains, if you look at the entire exhibit, to the fake
12 merchants that were used in the scheme. And if you remember,
13 Jaw13, as we know, is Ray, Jawbreaker13. These are the
14 profits, ladies and gentlemen, that they're earning from the
15 scheme.

16 Now, I want to take a moment and talk about the
17 charge. Judge Rakoff is going to give you detailed
18 instructions on the law, and you should follow his
19 instructions. The crime of conspiracy to commit bank fraud has
20 certain elements to it which Judge Rakoff will instruct you
21 about in more detail. For now I'm just going to briefly touch
22 on those elements so you can see how the evidence fits in to
23 show the defendants are guilty beyond a reasonable doubt.

24 So bank fraud conspiracy. In essence, that simply
25 means the defendants agree with one another and others, or

L3MHWEI2

Summation - Ms. La Morte

1 others, to get money from a federally insured bank or credit
2 union.

3 So one of those elements, the first element, is a
4 scheme to use lies to obtain money from a federally insured
5 bank or credit union. Now, we went through this. The evidence
6 has shown that the defendants perpetrated a massive transaction
7 laundering scheme, and that scheme, as we just went through,
8 was designed to get U.S.-issuing banks to approve card
9 transactions and release funds.

10 Now, just as to this element, there's one thing that I
11 want to point out to you. As I will expect Judge Rakoff will
12 tell you, the defendants' lies, they don't need to be made
13 directly to the U.S. Bank or credit union. It's enough if the
14 lies were initially made to someone else and those lies then
15 served as the means to induce the U.S. bank or credit union to
16 authorize the transactions and release the funds. And we went
17 through that four-prong model, and that's exactly what
18 happened: Ruben introduced those lies to the acquiring banks,
19 they went to Mastercard, and then they went to the issuing
20 banks.

21 And why did that happen? Why did those lies --
22 merchant name, merchant category code, merchant location,
23 descriptor, why is that important? Because that's what -- in
24 order to ensure that the U.S. banks would approve the Eaze
25 transactions and release the money from which the defendants

L3MHWEI2

Summation - Ms. La Morte

1 would be able to take their share.

2 So the second element has to do with intent. That the
3 perpetrators, the defendants, devised a scheme knowingly,
4 willfully, and with the intent to defraud. Essentially, this
5 means that the defendants deliberately intended to use their
6 lies perpetrated to obtain money from the U.S.-issuing banks as
7 opposed to acting innocently or by accident. And this is
8 literally the mountain of evidence that we just went over. The
9 scope of the lies told by the defendants, their own words in
10 the Telegram chats and emails, the lies that Ruben told when he
11 got caught, and the admissions of their coconspirators all
12 prove their intent. Their words, their actions prove their
13 intent.

14 The third element is that the bank or credit union,
15 the U.S. Bank or credit union, has to be federally insured.
16 There's no dispute about this. You can put this aside. Each
17 of the witnesses from Bank of America, Actors, and Citi
18 explained how those institutions are federally insured by the
19 FDIC, and for Actors, the NCEIU, and that's all that's needed
20 to prove this element. So that could be put aside.

21 And, finally, the government must prove that one or
22 more of the lies were material. We're going to get to
23 materiality in a moment. In this case it's a matter of common
24 sense.

25 Before we get to materiality, I just want to touch on

L3MHWEI2

Summation - Ms. La Morte

1 venue. Now, ladies and gentlemen, for the charged crime, you
2 must also find that there's venue in this district, the
3 Southern District of New York, which includes Manhattan. Venue
4 is not technically an element of the crime, but it is something
5 that the jury needs to find. All "venue" means is that
6 something happened in Manhattan, or somewhere else in the
7 Southern District, in furtherance of the bank fraud scheme.
8 You saw examples of that throughout this trial. Actors told
9 you that they're headquartered in Times Square, their servers
10 are in Manhattan, and Citi is also headquartered in New York
11 City. And that's enough to establish venue.

12 Now let's turn to materiality. This is the last piece
13 that I'm going to talk to you about.

14 So here's the question for materiality: Let's all
15 think about a reasonable U.S. banker. This person, this
16 reasonable banker, needs to decide whether the bank should
17 authorize credit and debit transactions for a particular type
18 of product. Would it be important to this person to know
19 whether the product is illegal at the federal level? Do you
20 think a reasonable banker -- that would be important for a
21 reasonable banker to know? I mean, wouldn't it be important
22 for the reasonable banker to want to know what the product
23 actually is in the first place that they're being asked to
24 approve? Would the reasonable banker care about being lied to
25 over and over and over again in the course of three years?

L3MHWEI2

Summation - Ms. La Morte

1 Ladies and gentlemen, one of the great things that you
2 bring to the table as a jury is your common sense, and this is
3 exactly where your common sense comes in. Of course, the
4 answer is yes. Of course the reasonable banker cares. Whether
5 it's a big bank or a small credit union, just like everyone
6 else, they're entitled to know who they're doing business with.
7 How is it possible to make an informed decision otherwise?

8 And, of course, you heard the bank and the credit card
9 witnesses. They want to know the truth. They need to know the
10 truth. It's important to them to know exactly what they're
11 being asked to approve, especially when it's something that
12 remains illegal at the federal level. Every bank witness who
13 took the stand told you this, every single one. You can look
14 at the transcripts if you want. These bank witnesses told you
15 that their banks aren't willing to take on the risks associated
16 with approving transactions from a U.S. marijuana merchant such
17 as Eaze. Regardless of the state laws, it's still illegal on
18 the federal level. That's the law, and it's not in dispute.
19 So it matters to them to know. To take just one, Mike
20 Steinbach from Citibank told you that Citi, they just didn't
21 want to be lied to, period, full stop, regardless of what's
22 being covered up. Obviously, this is reasonable.

23 And the bank witnesses, they gave you another reason
24 that they need to know the truth about what they're being asked
25 to authorize. They don't want to get kicked off the Visa and

L3MHWEI2

Summation - Ms. La Morte

1 Mastercard networks. Visa and Mastercard have rules that
2 prohibit their networks from being used for illicit purchases.
3 Actors and Citi told you that it would literally be devastating
4 to their businesses to get kicked off the networks. They don't
5 want to risk it. So they decided that they are not going to
6 knowingly approve these transactions. This is reasonable. And
7 on the screen you have excerpts of their testimony.

8 How would it impact Citi business if it wasn't able to
9 participate in Mastercard and Visa's payment system?

10 We would not be able to have a credit card business
11 and make any money. It matters.

12 Actors, a small federal credit union in New York:

13 Is it important for Actors to remain in compliance
14 with Visa' rules?

15 Yes, it is.

16 Why?

17 Not remaining in compliance could result in sanctions,
18 either from our federal regulators or from Visa themselves.

19 Question: And what impact would it have on Actors'
20 business if it wasn't able to participate in the Visa network?

21 It could be a huge impact. We would likely no longer
22 be in existence.

23 This is reasonable, ladies and gentlemen. It's
24 obvious and it's common sense. But even beyond the common
25 sense, beyond the witness testimony, there's even more. The

L3MHWEI2

Summation - Ms. La Morte

1 testimony of these witnesses is corroborated in so many ways.
2 You saw the Visa and the Mastercard rules that prohibit their
3 networks from being used for illegal transactions. You also
4 saw bank policies explicitly prohibiting the banks from
5 engaging in activities involving the sale of marijuana products
6 in the United States.

7 But, wait, there's even more than that. You may
8 remember in the beginning of the case Mr. Burck told you,
9 "Actions speak louder than words." Well, that's an oldie but
10 goody expression for good reason, and on this front there's
11 plenty of action, plenty of action proving that the banks care
12 about knowing what they're being asked to authorize. Here we
13 have Bank of America's -- snippets of their marijuana
14 transaction monitoring policies. Exhibits show that they refer
15 suspicious merchants to the Visa and Mastercard network. They
16 follow up with that to see what happened to them if they're
17 terminated. And the time that they spend in this, investing in
18 this, they spend hours of time and money in transaction
19 monitoring policies, network escalation policies, reporting
20 policies. They have a whole group, the Network Compliance
21 Team, that's dedicated to this. Why would they do this if they
22 didn't care about identifying potentially prohibited marijuana
23 transactions? Why would they refer suspicious merchants to
24 Visa and Mastercard and routinely follow up if it didn't matter
25 to them? It doesn't make sense.

L3MHWEI2

Summation - Ms. La Morte

1 And Citibank, Citibank talked about the resources they
2 invest in their fraud monitoring engine. \$276 million a year
3 and \$18 million in technology investments. Why is the bank
4 investing hundreds of millions of dollars to detect fraud if
5 they just don't care about being lied to?

6 Wells Fargo, Wells Fargo shut down marijuana
7 dispensary accounts and accounts that relate to Keith McCarty
8 and Eaze. Here's an example, Green Coast Management. That was
9 one of the marijuana dispensaries in this scheme. Wells Fargo
10 shut them down because they discovered that it was in fact a
11 marijuana company.

12 Here we have a slide from Steven Pearce, who was the
13 owner of a marijuana dispensary involved in this case, and he
14 writes to Michael Tassone: Any wires from or to Eaze raises a
15 red flag because your name is synonymous with cannabis. This
16 has resulted in two account closures for us. The last bank
17 closure, the manager came right out and said: We cannot do any
18 business with Eaze.

19 Ladies and gentlemen, it matters. These are actions.
20 These are actions that the bank take. They care. And in
21 addition, ladies and gentlemen, we also learned that Visa and
22 Mastercard, they discovered the fake merchants. They
23 discovered the fake merchants were actually selling marijuana
24 products. So what did they do? They shut them down. Here are
25 the fake merchants that Visa identified operating through the

L3MHWEI2

Summation - Ms. La Morte

1 Eaze.com website. Visa discovered that, and they shut it down.
2 Why would they shut it down if they didn't care? Why wouldn't
3 they just let the transactions go through? No, they shut it
4 down.

5 Same thing for Mastercard. Mastercard, from an
6 internal tip, started investigating Eaze, and they found, if
7 you look on the right, the shell companies that Eaze was using
8 to funnel, secretly funnel, through their marijuana
9 transactions. What did Mastercard do? Did it look the other
10 way? Did it decide not to do anything because it just didn't
11 care? No, they found out, and they shut it down.

12 And Mr. Burck was right on this point, actions do
13 speak louder than words. That's just common sense. These lies
14 matter to the bank. Like everyone else doing business, it
15 matters to them to know who they're dealing with, especially if
16 it involves illicit transactions. It's just common sense.
17 Trust your instincts.

18 And you know who knew that? Do you know who knew
19 that? The defendants. The defendants knew that as well.

20 Could we go to the next side.

21 Here's some examples.

22 Ray: The banks, Visa, and Mastercard do tests and
23 mystery shopping, so we have to be careful.

24 Ray: These idiots don't know that they're creating
25 chargebacks, but we do, Ruben.

L3MHWEI2

Summation - Ms. La Morte

1 And look at this one on the bottom. It's an email
2 from Ray. He says: Let's say Wells Fargo customers complain
3 about not liking the weed or the weed-issuing doctors. The
4 higher the chance that Wells Fargo knows that weed is being
5 sold and then reaches out to Visa and Mastercard saying this
6 bank in the UK is doing processing for weed.

7 The defendants know. Of course, now the defense
8 attorneys are trying to tell you that none of this mattered to
9 the U.S. Banks. That the U.S. banks, they just don't care.

10 Now, before I go further, I want to repeat that the
11 government always bears the burden of proof, as Judge Rakoff
12 has told you. The defense never has to do anything in a
13 criminal case. But here, the defense chose to make opening
14 statements, they chose to cross-examine witnesses, and they
15 chose to put on their own case. You are entitled to scrutinize
16 all of that.

17 And just like the defendants tricked the banks, their
18 attorneys are trying to pull one over you. Who are you going
19 to believe, the words and actions of the defendants at the time
20 or the arguments of their attorneys now? Back to common sense,
21 ladies and gentlemen. Don't let them trick you. This case is
22 about the defendants' conduct and the defendants' conspiracy,
23 but the attorneys want to make it about somebody, anybody else.

24 You may remember that Mr. Burck promised to show you
25 this supposed grand conspiracy of the global financial system.

L3MHWEI2

Summation - Ms. La Morte

1 Is that the conspiracy you heard about in this case? No, of
2 course not, because that was an attempt to distract you from
3 the real conspiracy in this case, the conspiracy of their
4 clients to commit bank fraud.

5 When you go back in that jury room, ask yourselves
6 this question: Why did they cover it up? If it didn't matter,
7 why did they cover it up for years, at such expense to
8 themselves? The answer is easy: They covered it up because,
9 like every single bank witness who took the stand told you,
10 like the rest of the evidence showed you, those lies, those
11 lies that they put in the system, they did matter.

12 Now, ladies and gentlemen, I'm going to sit down in
13 just a minute, but before I do, I want to leave you with this:
14 When you look at all the documents, all the evidence, fake
15 applications, the Telegram chats, bank records, a lot of
16 records in this case, the witness testimony and all the other
17 evidence, it may seem that this case is a little bit
18 complicated, but it's not. It's actually very straightforward.
19 The case, this case, comes down to one question: Did Ray
20 Akhavan and Ruben Weigand lie in order to get money from U.S.
21 banks? The evidence tells you the -- the evidence, the
22 evidence tells you that the answer is yes, yes, beyond a
23 reasonable doubt.

24 Ray Akhavan and Ruben Weigand perpetrated a massive
25 fraud scheme over the course of years. They secretly pumped

L3MHWEI2

1 over \$150 million worth of illicit transactions through the
2 U.S. financial system. They did it by lying, and they did it
3 to get their cut of fees from those transactions, fees taken
4 from the money sent by U.S. banks who were deceived into
5 thinking that those transactions were for something else.

6 But, ladies and gentlemen, this is America. With hard
7 work and luck, you're entitled to earn a living, you are
8 entitled to earn money, but what you can't do is you can't do
9 it by lying. Big bank, small bank, mom-and-mop credit union,
10 it doesn't matter, you can't do it by deceiving them. You
11 can't do it by robbing them or anyone else of their right to
12 know who or what they're doing business with. But that is
13 exactly what the defendants did. They put themselves above the
14 laws that the rest of us have to follow, and that is why they
15 are guilty of conspiring to commit bank fraud.

16 THE COURT: Thank you very much.

17 All right. Ladies and gentlemen, we'll take our
18 midmorning break and resume in about 15 minutes.

19 (Jury excused)

20 THE COURT: Please be seated.

21 All right. Anything counsel needs to raise for the
22 Court?

23 MR. TAYBACK: Your Honor, on two occasions the
24 government made comments about defense lawyers trying to lie to
25 the jury or put one over on the jury, and I think that's worthy

L3MHWEI2

1 of a curative instruction.

2 MR. GILBERT: I join in that request.

3 THE COURT: Well, I was a little taken aback by that,
4 in what was otherwise a very straightforward summation. There
5 seemed to be, what I'm sure the government may not have
6 intended, but, in effect, an accusation that defense counsel
7 were lying to the jury as opposed to what would have been
8 permissible, which was that the arguments that defense counsel
9 are making are not to be credited, or something like that, but
10 that's -- the way it came out was a little more personal. I
11 don't know.

12 MS. LA MORTE: It certainly was not -- obviously, was
13 not intended that way.

14 THE COURT: I understand it wasn't intended, but it
15 did come out a little bit that way. I'll think about that and
16 let you know right before we start the next.

17 MS. LA MORTE: OK. Thank you, your Honor.

18 (Recess)

19 (Continued next page)

L3MPWEI3

(In open court; jury not present)

THE COURT: Please be seated. All right. I will give a short curative instruction.

THE DEPUTY CLERK: Jury entering the courtroom.

(Jury present)

Please be seated.

Ladies and gentlemen, just one quick note. In the government's otherwise perfectly proper opening summation, counsel inadvertently suggested at one or two places that defense counsel may have attempted to mislead you. It is perfectly proper, of course, to ask you to not agree with the arguments on either side. It's up to you to decide whose arguments are better.

But all the lawyers in this case are highly professional, and any suggestion that defense counsel or any other lawyer would set out to purposely, intentionally lie to you or mislead you is totally uncalled for, and that wasn't, I am assured, what the government intended, but I just want to make sure that you understand that as well.

We have in the United States what's called an adversary legal system. Each party gets represented by a lawyer. Each lawyer presents the best arguments he or she can for their respective sides. This has come down to us for hundreds of years, and I must tell you, I'm personally always thrilled when there's a jury trial because this is the

L3MPWEI3

Summation - Mr. Artan

1 Constitution working.

2 But the lawyers just play the roles of professionals,
3 and as I say, we have highly professional lawyers on both sides
4 of this case.

5 All right. Let's go. Counsel for Mr. Weigand, do you
6 want to go first?

7 MR. ARTAN: If it please, your Honor.

8 THE COURT: Okay.

9 MR. ARTAN: Good morning, everyone. First, I want to
10 echo the appreciation you've heard about your diligence as
11 jurors, particularly in these days. I will talk to you later
12 more about your unique position and importance -- Can you all
13 hear me? Great. Thank you.

14 I will talk later about how important jurors are, and
15 how important they are to the American judicial system. For
16 the moment, I want to thank you all for your service on behalf
17 of myself, on behalf of Mr. Weigand and his other lawyers, who
18 you've met, Mike Gilbert, Shriram Harid, Steve Pellechi and Amy
19 Lesperance. We're all honored to represent Mr. Weigand.

20 I'd like to start by going back to the opening
21 statement made by Mr. Gilbert at the start of our trial. He
22 told us all about a party, where everyone got what they wanted,
23 and now you've heard the evidence. Well, the party is still
24 going strong. The night is young. Guests are the same. Eaze
25 is still taking Visa and MasterCard. The banks are still

L3MPWEI3

Summation - Mr. Artan

1 outside the door taking the fees, even ECP, the European bank
2 you heard about. They're still there because they're now the
3 merchant bank for Circle Financial. And if you recall, Circle
4 Financial was the witness you heard about on Friday.

5 The party, though, has only gotten bigger in the last
6 six months. \$50 million in Eaze card transactions through
7 Circle, and amazingly, amazingly, two of the Eaze witnesses the
8 government called, who got immunity, left the courthouse and
9 went right back to the party. They told you -- they claim they
10 committed bank fraud; yet, they still work for Eaze and have
11 even been promoted. The party is going on for them.

12 Now, before I get into the evidence, I want to start
13 with several ideas that are fundamental to this case, in fact,
14 all criminal cases. First, the burden is on the government, on
15 the government, to prove guilt beyond a reasonable doubt.
16 Let's first talk about the burden of proof, one of the sacred
17 requirements of our justice system.

18 Tomorrow, his Honor will instruct you about the burden
19 of proof, and included in the instruction is the following
20 language: This burden never shifts to any defendant, for the
21 simple reason that the law presumes a defendant to be innocent
22 and never imposes upon a defendant in a criminal case the
23 burden or duty of calling any witness or producing any
24 evidence. In other words, each defendant starts with a clean
25 slate and is presumed innocent.

L3MPWEI3

Summation - Mr. Artan

1 A defendant never has to prove anything. He does not
2 have to testify, and there's an instruction about that too, or
3 call witnesses or produce evidence. It's always the
4 government's obligation to prove every element of bank fraud
5 beyond a reasonable doubt.

6 So what does that mean? What is reasonable doubt?
7 What is beyond a reasonable doubt? To reach proof beyond a
8 reasonable doubt, you would have to be able to honestly say
9 that you have an unhesitating belief that a defendant is guilty
10 to the extent a reasonable person would apply to most important
11 matters of their personal affairs in life.

12 What does that mean? This is the highest burden of
13 proof in our system. Now, some of you might have sat on civil
14 juries and heard of other standards of proof. For instance,
15 there's, in civil cases, there's a preponderance of the
16 evidence, which is more likely than not. In some other civil
17 cases you have what's called the clear and convincing evidence
18 standard. Under that standard, you would have to have an
19 abiding conviction that the truth is highly probable. Okay?
20 That's clear and convincing evidence. Proof beyond a
21 reasonable doubt is a higher standard --

22 THE COURT: Counsel, I really think the only person
23 who can instruct the jury on burdens of proof and particularly
24 one that they have heard not at all about, clear and
25 convincing, is the Court. Please continue to the facts of this

L3MPWEI3

Summation - Mr. Artan

1 case.

2 MR. ARTAN: May I at least say it's the highest
3 standard, your Honor?

4 THE COURT: You've already said that.

5 MR. ARTAN: Okay. Thank you.

6 Now, I will respectfully say that if you presume a
7 defendant's innocence and require the government to prove their
8 case beyond a reasonable doubt, you have an easy call here.
9 The government has clearly not proven their case beyond a
10 reasonable doubt.

11 In fact, the government won't say it, but what they're
12 really asking you to do is to apply a presumption of guilt
13 instead of the presumption of innocence. So what do I mean by
14 that? For instance, when they show you an e-mail or a chat or
15 some other item of evidence, they're asking you to speculate
16 and presume the worst. They're throwing out a theory as to
17 what happened, who was doing it, what they were thinking.
18 They're speculating, and they're asking you to adopt their
19 theory of the case when you should be presuming innocence and
20 scrutinizing the case that the government puts forth.

21 For instance, we heard this morning that Mr. Weigand
22 is an expert and he's sophisticated. There was no evidence
23 about that. Asking you over and over again to talk about
24 EUprocessing, the EUprocessing e-mail being Mr. Weigand. We
25 heard lots of evidence to the contrary, but they want you to

L3MPWEI3

Summation - Mr. Artan

1 speculate and presume that it's his e-mail when it's not. And
2 saying Ruben, Ruben, Ruben over loudly does not overcome the
3 presumption of innocence. Mr. Weigand is not Ruben, Ruben,
4 Ruben.

5 And likewise, the government has presented evidence
6 from witnesses who have a lot to lose if they don't go along
7 with the government in this case. The government is implicitly
8 asking you to presume that these self-interested witnesses are
9 telling the truth when often the opposite is true. I'll come
10 back to this a number of times. So let's look at some of the
11 elements the government must prove beyond a reasonable doubt.

12 The government must prove that the defendants
13 conspired to induce the U.S. issuing banks to authorize the
14 transactions by means of the alleged misrepresentations, and
15 they have to prove that the misrepresentations were made
16 knowingly, willfully and with a specific intent to defraud the
17 U.S. issuing banks.

18 "Knowingly" means to act consciously and voluntarily,
19 rather than by mistake or inadvertence. "Willfully" means to
20 act deliberately and with a bad purpose, rather than
21 innocently; and the "specific intent to defraud" means an
22 intent to use misrepresentation to obtain money or property
23 from a federally insured bank, directly or indirectly. And
24 we'll come back -- I'll come back to this, but please recall
25 Visa and MasterCard is not a federally insured bank. European

L3MPWEI3

Summation - Mr. Artan

1 acquiring banks are not federally insured U.S. banks.

2 Now, you've heard previously this morning, and just
3 now, some of the requirements about proving bank fraud. Let
4 me -- I want to focus basically on a couple of areas, one is
5 materiality, and materiality, you heard a little bit about, is
6 whether Mr. Weigand knowingly, willfully and with specific
7 intent -- pardon me.

8 We can talk about materiality. And then the other
9 issue we're going to talk about is whether Mr. Weigand
10 knowingly, willfully and with specific intent joined and
11 participated in a conspiracy where the object was inducing U.S.
12 banks to authorize card transactions.

13 So I want to start with materiality. You heard this
14 statement: Lies, lies, lies, lies. Well, what if the
15 statements don't matter? If they don't matter, they're not
16 material, and there's no crime. And the question correctly
17 stated was: Would a misrepresentation be reasonably likely to
18 influence a reasonable banker in deciding whether to authorize
19 a transaction? And I suggest to you that the government's case
20 fails entirely on this issue alone, and a not guilty verdict is
21 required on that basis.

22 In talking about materiality and how it applies in our
23 case, I want to play a little guessing game with you. Okay?
24 So the problem is you're a jury, and you can't talk back to me.
25 So you have to keep your answers to yourself. So no answers,

L3MPWEI3

Summation - Mr. Artan

1 please.

2 I want you to guess who I am: I see no evil. I hear
3 no evil. I speak no evil. I see no evil, hear no evil, speak
4 no evil. Who am I? I'm a U.S. issuing bank, of course, that
5 continued to make money and get my fees. I pretend to see and
6 hear nothing going on requiring marijuana sales, even though I
7 know it's going on, even though it's happening right in front
8 of my eyes, even though there's billboards announcing it, even
9 after this case is charged, I still pretend not to see it.

10 To continue and make money and make my fees, I pretend
11 not to endorse marijuana sales. I speak no evil. I say I
12 don't engage in illegal transactions, whatever that might mean.
13 Yet, I don't tell my cardholders not to use their cards on
14 marijuana. I have internal policies on it, but I don't tell my
15 cardholders. And I authorize these transactions pretending not
16 to know. In fact, I continue to do these transactions any way
17 I can.

18 In the past six months, \$50 million worth of Visa and
19 MasterCard transactions went through Circle, and I've continued
20 to make money on these transactions. I didn't care before and
21 I don't care now. Remember hearing about Citi's \$280 million
22 anti-fraud budget with a whole zero dollars going to ferret out
23 marijuana purchases? Remember that Eaze has not been
24 blacklisted by any bank, even a full year after the indictment
25 in this case? It's there for the world to see.

L3MPWEI3

Summation - Mr. Artan

1 So I stand here, a U.S. issuing bank, and I, in truth,
2 don't care about stopping marijuana transactions. I just
3 pretend they don't happen. The hypocrisy is everywhere.

4 You heard Michael Steinbach say: I have no way of
5 checking if there's marijuana sales. Excuse me? What
6 nonsense. Citi it's a major global bank. They have thousands
7 of employees just in California alone, the fifth biggest
8 economy in the world. None of these employees would know this?
9 This is not a question of negligence. This is seeing it and
10 pretending it's not happening.

11 Now, unbelievably, the government's now defending
12 what's currently happening at Eaze. Customers continue to this
13 day to use Visa or MasterCard payment cards to buy marijuana
14 through Eaze, have it delivered to their door. In reality,
15 conceptually, is no different than what was happening before in
16 the facts of this case.

17 The Circle transactions are a complete charade. It's,
18 obviously, for marijuana sales. It's not a cryptocurrency
19 transaction. The evidence is clear. Customer goes to the
20 website, orders pot, submits the card details and gets the
21 delivery. How is that a cryptocurrency transaction? The idea
22 that they're not buying pot, but instead, buying
23 cryptocurrency, it magically turned into pot in a nanosecond?
24 The government's case is dead on that basis alone.

25 The government is saying Circle transactions are okay

L3MPWEI3

Summation - Mr. Artan

1 because it says Eaze in the descriptor. That was suggested in
2 the question and answer that you heard during the testimony on
3 Friday, but think about that. If it says Eaze in the
4 descriptor and they're paying, that means having Eaze in the
5 descriptor is not material. It's proof that if it was coded
6 correctly, it wouldn't have made any difference to the banks
7 because when it says Eaze in the descriptor, they know it's
8 Eaze. So how could hiding Eaze be material if when you say
9 Eaze, the payments are made? What you heard on Friday is
10 overwhelming proof that the banks do not care. They just don't
11 care.

12 You also heard that U.S. banks are focused entirely on
13 satisfying their cardholders. The transactions are approved
14 based on the cardholder and their creditworthiness. The
15 transactions do not get approved based on MCCs or descriptors.
16 That's at the other side of the transaction. That could only
17 come into play after the transaction has occurred. You even
18 heard evidence that it was weeks later that it would even come
19 up.

20 As long as the credit card bill will be paid -- with
21 interest, of course -- it's all good. And Citi's head of fraud
22 put it best. Here he says: If it's Mike Steinbach, if I'm
23 within the credit limit, I can do whatever I want. And you
24 heard the same from the other two banks the government called
25 to testify.

L3MPWEI3

Summation - Mr. Artan

1 The descriptors you heard so much about from the
2 government, the issuing banks don't have any information about
3 that when they approve or decline the transactions.

4 Here is Chuck Brown from credit union, what he said:

5 "If I understood you correctly, there's no one at
6 Actors who actually looks at the descriptors to decide whether
7 or not to approve a transaction, correct?

8 "A. Not at the time of the transaction."

9 And Richard Clow from Bank of America:

10 "But you don't have the descriptor information,
11 correct?

12 "A. Correct."

13 Now, I would and could talk more about materiality,
14 but it's my understanding that Mr. Tayback is going to be
15 discussing this at length, and we've decided to spare you
16 having to hear twice as much about materiality. But please
17 understand, there is a complete failure by the government to
18 prove that what they claim, which is that the false
19 misrepresentations here that they're claiming regarding MCCs
20 and descriptors, would have made any difference to the U.S.
21 bank because it's information they didn't get. And that fact
22 alone is fatal to their case against Mr. Weigand and
23 Mr. Akhavan. And if you find that these alleged
24 misrepresentations were not material, you have to acquit.

25 Now, next, I want to talk about whether the government

L3MPWEI3

Summation - Mr. Artan

1 has proven beyond a reasonable doubt that Ruben Weigand acted
2 knowingly and willfully with a specific intent to defraud U.S.
3 banks. And I'll suggest to you that there's been a complete
4 failure of proof in this regard too.

5 Mr. Weigand is charged with conspiring to defraud U.S.
6 banks, yet, you didn't hear one witness take the stand and say
7 that they ever discussed U.S. issuing banks or their policies
8 with Mr. Weigand. You didn't see one single chat message or
9 document in which Mr. Weigand discussed U.S. issuing banks or
10 their policies.

11 The government showed you an exhibit, 422, in which
12 Mr. Akhavan talks about chargebacks, not worried that the U.S.
13 banks are going to hear about it, worried that it's going to
14 get back to Visa and MasterCard. That's what he says. This
15 might get back to Visa and MasterCard. He doesn't say, oh,
16 gosh, the U.S. banks might get wind of this. He said the U.S.
17 banks might tell Visa and MasterCard.

18 Not only is there no proof beyond a reasonable doubt,
19 there's no proof. The government is asking you to infer, to
20 guess, to speculate, because they show evidence of Mr. Weigand
21 discussing merchant banks in Europe, that, therefore, he must
22 have a criminal intent towards U.S. banks, and that's not
23 supportable. It's certainly not proof beyond a reasonable
24 doubt. How do you defraud someone if you don't even think
25 about them?

L3MPWEI3

Summation - Mr. Artan

1 In the evidence that related to Mr. Weigand, it was
2 all about satisfying Visa MasterCard rules as they applied to
3 merchant banks in Europe. Now, the Visa MasterCard rules are
4 not criminal laws. The worst thing that happens, and you heard
5 this already, is that a merchant gets terminated. That's the
6 worst. It's a rule book. It's in evidence, and it governs the
7 relationship between Visa and MasterCard and merchant banks.
8 There's maybe fines and penalties between the entities and
9 that's it.

10 And you'll also hear from the jury instructions that
11 banks and credit unions outside the U.S. and credit card
12 companies are not federally insured and, therefore, they're not
13 covered by the bank fraud law. This, too, is fatal to the
14 government's case. It's not enough for them to say Mr. Weigand
15 knew all about the lies to Visa and MasterCard and what the
16 European banks were doing, they have to connect it up, and they
17 can't connect it up because it's all based on speculation or
18 based on stellar witnesses like Oliver Hargreaves.

19 Now, as you know, Mr. Weigand's -- I hate to use the
20 word "involvement" -- but his involvement in this narrative
21 began in January of 2018 in this meeting in Calabasas,
22 California. So let's look at the chronology of events
23 beginning well before Ruben Weigand had any connection or
24 knowledge of Eaze.

25 Witness after witness confirmed that Mr. Weigand had

L3MPWEI3

Summation - Mr. Artan

1 no involvement in the Clearsettle days. For more than half of
2 this alleged conspiracy, Mr. Weigand had no alleged involvement
3 at all. Now, you also heard how the process ended with respect
4 to Clearsettle. In 2017, Oliver Hargreaves and his business
5 partner, Koen Vanpraet, were setting up a company -- were
6 working for a company called Intrapay, and the two of them and
7 others were discussing in detail the setup for their business
8 structure. This is in 2017. And there's e-mails to that
9 extent, and you've seen them.

10 So let me emphasize something. When these people were
11 communicating about these plans, they were using their own
12 e-mail addresses. They weren't doing anything to hide what
13 they were doing. Everything was aboveboard. And did they
14 think they were committing crimes? Remember, Hargreaves told
15 us that Intrapay was his boss, Gary Murphy's, attempt to have a
16 legal, legitimate business. That's what Intrapay was about.

17 Now, we know that Mr. Hargreaves and Gary Murphy did a
18 lot of illegal stuff, and I'll talk a bit more about it at some
19 point soon, but the fact remains that Intrapay was based -- was
20 formed with the idea of legitimate business.

21 So we have witnesses agreeing that Clearsettle,
22 through Europe, was up and running already before Mr. Weigand
23 heard anything about what was going on. So the testimony from
24 Oliver Hargreaves and Jim Patterson was that their
25 understanding was that Ruben Weigand was somehow this critical

L3MPWEI3

Summation - Mr. Artan

1 link to Europe, it makes no sense. In fact, no witness has any
2 firsthand knowledge of Ruben Weigand submitting a bank
3 application ever. What you've been presented is unsupported
4 testimony, secondhand testimony and speculation.

5 In fact, you'll see a chat where Mr. Weigand says,
6 when he's asked about submitting something, he says: Send it
7 off to EU; don't tell me about it. I think that was
8 Exhibit 4004.

9 So we have a situation where the Eaze processing
10 system needed to be updated to accommodate what's soon to be a
11 boom in marijuana sales in California because recreational
12 marijuana was made legal in 2018. We heard about that.

13 So we have a situation where Ruben Weigand, who was
14 going to be -- who was meeting with Worldline people, nothing
15 to do with Eaze or Oliver Hargreaves or anything of this. He
16 was meeting with Worldline people and also happened to be
17 meeting with Mr. Hargreaves, there's no evidence he traveled to
18 Los Angeles for a meeting with Hargreaves and Vanpraet. So
19 when the government says he traveled to California for that,
20 there's no evidence to that. In fact, logic tells you the
21 contrary. He was meeting with Worldline. He also happened to
22 meet with Hargreaves and Vanpraet.

23 How do you know that? Because the plan -- the plan
24 was Hargreaves and Vanpraet's plan, and their plan -- the idea
25 of their plan was that they were going to be processing the

L3MPWEI3

Summation - Mr. Artan

1 marijuana with their own acquiring banks. That was their plan.
2 So why would Mr. Weigand be invited to a meeting where the
3 people, who were presenting the plan, already are intending to
4 have their own acquiring banks? In other words, there was no
5 reason for Mr. Weigand to even be there.

6 So to keep this in context, let's look at what Oliver
7 Hargreaves actually said. So he was asked about not being
8 secretive, and he was asked about the fact that nothing was
9 secretive. And he said: Quite frankly, we didn't really know
10 the nuances, I certainly didn't, between state and federal law
11 in the U.S. And stupid as it sounds, yeah, the short answer to
12 your question is, yeah. And my question was that his intent
13 was the process was legal. And then he amended the answer, and
14 he said I knew what we were doing was not wholly white, and
15 there was a term that was used very much certainly in the
16 industry where I worked, which was, is it gray or is it white?
17 And I would say, my view on this was that it was a gray
18 business.

19 Well, there you have it from the government's star
20 witness, after seven -- after hours and hours on the stand,
21 repeating the mantra. He thought what the government wanted to
22 hear, phony application, phony application, fraudulent,
23 fraudulent, fraudulent. How many times did he say fraudulent?
24 He apologized for omitting the word "fraudulent."

25 Notwithstanding that, in a moment of candor, he let it

L3MPWEI3

Summation - Mr. Artan

1 slip. Oh, you know, it was -- I thought it was legal but, oh,
2 okay, maybe it was a gray area. That's not the stuff of a
3 federal crime. It's not the stuff of a specific intent to
4 defraud, and that was their signature witness. And the
5 signature witness, I would point out, it was hardly mentioned
6 during the government's presentation this morning.

7 So the following month, in February 2018, while
8 Mr. Weigand was in London, he introduces Hargreaves to a
9 business contact he had in Europe, Andreas. We've heard all
10 about Andreas a number of times, but as Mr. Hargreaves told
11 you, Andreas was going to be the ISO, who he explained was the
12 Guy who was interfacing with the acquiring banks.

13 And he was asked: What were your observations of
14 Andreas? Apart from the fact that he was very tall, he was
15 unwell. He was wearing a mask like this one. Was there any
16 discussion of what Andreas' role was to be in the Eaze scheme?
17 Yes, he was going to be the person submitting the application
18 packs, fraudulent application packs to the acquiring banks.
19 And you see again he has to put in "fraudulent."

20 And we know, and I'll come back to it, Andreas was
21 EUprocessing. Andreas was EUprocessing.

22 Now, you've also heard about a meeting in March 2018
23 in Calabasas, where Eaze management and marijuana dispensary
24 owners were present. And Darcy Cozzetto, the only witness who
25 was present for the whole meeting, testified she had never met

L3MPWEI3

Summation - Mr. Artan

1 or communicated with Mr. Weigand. She said -- she was asked
2 the following question:

3 "So you had no recollection of ever meeting Ruben in
4 LA; is that what you said?

5 "A. I have no recollection of ever meeting Ruben at all,
6 including that meeting in LA, now.

7 "Sitting here today, you have no recollection of ever
8 meeting a person named Ruben, right?

9 "A. Correct.

10 "And you have no recollection of ever having had any
11 conversations with a person named Ruben, right?"

12 There's no testimony about Ruben Weigand being in that
13 meeting. Now, the government is going to ask you to speculate
14 that that was him because there was someone German, but we'll
15 come back to that. But you have no information about whether
16 this German person had any participation in the meeting or what
17 was said.

18 Now, on April 3rd, 2018, Darcy Cozzetto is introduced
19 over e-mail to Andreas from EUprocessing, and over the next
20 several months, Mr. Weigand is on some chat exchanges about the
21 Eaze processing. And the government spent a lot of time
22 pointing to these discussions as evidence of bank fraud, but
23 you should look through those chats. You'll see that in none
24 of those communications does Mr. Weigand have any discussion
25 about issuing banks or any policies of U.S. banks or how to

L3MPWEI3

Summation - Mr. Artan

1 fool U.S. issuing banks. Everything is about Visa and
2 MasterCard, and in one of those chats, as I mentioned before,
3 he says: Send it to EUP, not me.

4 And let's talk for a few minutes about the
5 government's Eaze witnesses. They all either got immunity or,
6 in Mr. Patterson's case, a cooperation agreement. They each
7 got protection from the government, and whatever they're saying
8 now, having received immunity, logic will tell you -- logic
9 will tell you, and the reality is, at the time, they didn't
10 think it was a crime any more than Mr. Hargreaves thought it
11 was a crime when he said we thought it was legal -- oh, let me
12 admit it -- amend that. It's a grayish area.

13 So take a step back. Ask yourselves, where is Eaze in
14 this whole story? Eaze went from a barely functional cash
15 operation, with driver's getting robbed on the street, to now a
16 business with 1,200 employees, over a thousand employees, over
17 a thousand. A company that barely existed not too many years
18 ago.

19 The former CEO, Jim Patterson, he's testified. He
20 said he was guilty of bank fraud. He also testified that he
21 had just -- just 1.5 percent of the company's stock. And when
22 he was pressed on cross-examination, he had to acknowledge that
23 was worth at least \$4 million. Eaze does well. He does well,
24 even to this day. Even to this day.

25 And the valuation Mr. Patterson talked about doesn't

L3MPWEI3

Summation - Mr. Artan

1 even take into account the \$50 million of card transactions
2 that have been going through Circle in the last six months and
3 continue to. And that \$50 million doesn't even factor in the
4 ACH transactions, which is a direct link between these supposed
5 victim banks and Eaze on their website, all to facilitate the
6 skyrocketing number of smooth, cashless deliveries of pot to
7 their customers in California.

8 Now, think about it. This company has somehow
9 survived a civil lawsuit by a competitor trying to knock them
10 out of business. They are not missing a meal, and this case is
11 about them. They're still standing. They're still thriving.
12 Two of their witnesses, Mr. Wang and Tassone, are still working
13 there, and they've even been promoted.

14 They came here and testified -- I would suggest to
15 you, implausibly testified -- that they believe they committed
16 bank fraud at Eaze for years and went right back to work after
17 their testimony. After their testimony, they were going right
18 back to work, where Visa and MasterCard are still accepted to
19 this day.

20 This is where the money is. These are the
21 beneficiaries of the processing, Eaze and it's investors.
22 Think about what they told you about their own crimes that they
23 supposedly committed. Did they really believe they were
24 committing bank fraud at the time, or did they decide -- or did
25 they decide it would really be much easier to tell the

L3MPWEI3

Summation - Mr. Artan

1 government what the government wanted to hear so they could go
2 back to work? Believe it or not, innocent people actually
3 plead guilty for many reasons, and these are exactly the
4 circumstances where that can happen.

5 Patterson, the CEO, he pled guilty to bank fraud from
6 2016 to 2019, but he told you in the courtroom that, no, I
7 didn't really think it was bank fraud until maybe 2018. And
8 yes, although I did think it was bank fraud then, I had no
9 problem putting Darcy Cozzetto, poor new employee at Eaze,
10 right in charge of all of it. You put a new employee in charge
11 of bank fraud, is that what you do if you're a fraudster? Oh,
12 you know I'll just get this young girl off the street, and I'll
13 put her in charge of my criminal enterprise.

14 And you also heard from John Wang. He's the last Eaze
15 witness who testified. This was another Eaze witness who was
16 deeply involved in the credit card processing. He was in the
17 weeds on the technical side of the processing. He was
18 appointed the product manager, and despite Mr. Wang's heavy
19 involvement in the processing, he didn't remember Ruben Weigand
20 much at all. He testified he had a 20-minute phone call with
21 Mr. Weigand in July of 2018, but the call was unremarkable.
22 The discussion was how to link dispensaries with merchant
23 accounts in Europe, again in Europe, and remain within the
24 volume limits on the accounts.

25 And those volume limits, Mr. Wang conceded, pertained

L3MPWEI3

Summation - Mr. Artan

1 to the merchant banks, the ones in Europe. The volume limits
2 had absolutely nothing to do with the U.S. issuing banks, and
3 here's his testimony on it:

4 "But the volume limit, it was a volume limit at the
5 merchant bank which was in Europe; is that correct?

6 "A. My understanding was that there was a volume limit on the
7 merchant accounts.

8 "Q. And the merchant accounts were at merchant banks in
9 Europe, correct?

10 "A. I believe so."

11 Now, John Wang didn't remember ever speaking to Ruben
12 again after that, and the exchange before the call makes it
13 clear that Mr. Weigand was helping out Marty, mysterious Marty,
14 for that day. That phone call and the Easycompany chat that
15 went on for months, without any participation with Mr. Weigand,
16 that's the full accounting of Mr. Wang's communications with
17 Mr. Weigand.

18 Mr. Wang did not testify that Mr. Weigand discussed
19 descriptors, websites, cookies, pixels, nothing of the sort
20 and, you know, nothing about issuing banks. And this is
21 entirely consistent with what we've said. Mr. Weigand was not
22 involved in the day-to-day. He was not involved in anything
23 beyond European acquiring banks.

24 He did introduce some people, and he was roped in from
25 time to time to answer some questions. And if you read the

L3MPWEI3

Summation - Mr. Artan

1 chats, you'll see that's what's going on, and those issues
2 always related to the merchant banks overseas. And there is
3 nothing in the phone call with Mr. Wang, or his participation
4 in the Easycompany chat that has anything to do with U.S.
5 issuing banks. It just doesn't hold up.

6 See the witnesses for what they are. At the time,
7 they didn't believe they were committing bank fraud. At the
8 time, they thought they were in what Oliver Hargreaves says
9 some gray area, and they were trying to make processing work,
10 and that's it.

11 Now, when the government comes knocking at their door,
12 so to speak, they make a choice. You want me to call it bank
13 fraud? Fine. Give me immunity. Give me a deal. Let me get
14 back on a plane. Let me get back to California. You know,
15 there's money being made selling marijuana in California.

16 And what about all the -- aside from Mr. Wang, what
17 about the witnesses from Eaze? Hour after hour of testimony,
18 what do they say about Mr. Weigand? Very close to nothing at
19 all. He never worked for Eaze. He never had any stock in
20 Eaze. He never had any agreement with Eaze. He was not
21 involved in Eaze. Not a single one of the Eaze witnesses is
22 sure that they even met him.

23 Michael Tassone, who was on the stand for what
24 appeared to be -- what seemed to be for weeks, their most
25 longstanding employee, had no idea about Ruben Weigand.

L3MPWEI3

Summation - Mr. Artan

1 The person who was the main contact with EUprocessing,
2 Darcy Cozzetto, had virtually no idea. She repeatedly said,
3 and it was unambiguous, she was dealing with Andreas at
4 EUprocessing. The best she could do was a fuzzy recollection
5 recently that one of Mr. Akhavan's associates supposedly had a
6 square head and a German accent, and it took multiple
7 prosecution interviews just to get there. And you can figure
8 out how that thought got there.

9 Did Michael Tassone really think he was committing
10 bank fraud? He says he did. But really think about it. He
11 went to work for years thinking he was a fraudster? Same with
12 Darcy Cozzetto, Jim Patterson.

13 Now, did anyone ever say to the Eaze employees, oh,
14 use your secret e-mail address? Did anyone go to great lengths
15 to hide what they were us doing? Were there coded secret
16 language used? Ask yourself why not? The answer is simple.
17 They didn't think they were committing a crime.

18 One other critical piece of testimony you heard from
19 Eaze witnesses was this EUprocessing.com address.
20 Mr. Hargreaves testified about it over and over and over that
21 it was his understanding that the e-mail address was
22 Mr. Weigand's. But nearly all of those EUprocessing e-mails
23 were from either Kate Farmer or Michele Furlan to Andreas at
24 EUprocessing. Hargreaves' understanding, where did that come
25 from? It didn't come from reality. It might have come from

L3MPWEI3

Summation - Mr. Artan

1 his desire to substantially assist the government.

2 And contrast what he's saying and what your common
3 sense tells you, with what Darcy Cozzetto and Michael Tassone
4 said, which is, it was Andreas we were communicating with. 193
5 EUprocessing e-mails, Cozzetto, Farmer, Furlan, they were to
6 Andreas. One e-mail signed by Mr. Ruben -- signed by Ruben,
7 presumably Ruben Weigand.

8 Now, all you have to do is look at the numerous
9 e-mails signed off by Andreas. You're welcome to look at them.
10 And you saw on Mr. Weigand's laptop e-mail, after e-mail, after
11 e-mail from his real address, which is
12 RW@payment-consultants.com, not EUprocessing@ProtonMail.com.

13 And you heard cross-examination of Agent Hupcher. She
14 was asked:

15 What is the e-mail address associated with Ruben
16 Weigand?

17 And she said: RW@payment-consultants.com.

18 You don't see the e-mail address
19 EUprocessing@ProtonMail.com, do you?

20 And then again, who were the recipients on this
21 e-mail? Ruben and Ray.

22 What's the e-mail associated with Ruben Weigand?
23 RW@payment-consultants.com.

24 And one more, two more. What's the e-mail address
25 associated with Ruben Weigand?

L3MPWEI3

Summation - Mr. Artan

1 Same thing.

2 Asked: You don't see any response from Mr. Weigand to
3 Mr. Chmiel, do you?

4 I do not.

5 And again, e-mail address associated with Mr. Weigand
6 is RW@payment-consultants.com.

7 Now, in the government's opening statement, the
8 government promised to show you evidence that Ruben Weigand
9 made millions and millions of dollars, played a critical role,
10 arranging to get money removed from overseas to merchant bank
11 accounts and so on. Well, the government put on days and days
12 of evidence, witness after witness, and you didn't see any such
13 proof.

14 The government told you they found financial
15 statements, bank statements, supplier statements on
16 Mr. Weigand's laptop. What the government ignored, and what
17 you didn't hear this morning and what their agents were forced
18 to admit, was that every single one of those financial
19 statements only reached Mr. Weigand's laptop in January of
20 2020, almost a year after this conspiracy ended, this alleged
21 conspiracy.

22 The government wasn't able to show you that
23 Mr. Weigand created, modified or sent a single one of the files
24 they highlighted on his laptop, not one, let alone any of the
25 files in Hargreaves' merchant application packages.

L3MPWEI3

Summation - Mr. Artan

1 So you have no idea who created any of these files?

2 I do not.

3 (Continued on next page)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

L3MHWEI4

Summation - Mr. Artan

1 MR. ARTAN: (Continued) Then during his examination,
2 his direct, Mr. Hargreaves, as we know, highlighted multiple
3 fraudulent merchant applications, but a number of them to a
4 merchant bank in Europe called Wirecard. And that's the only
5 merchant bank that Hargreaves connects Mr. Weigand to, which
6 supposedly occurred in that room in London where Eaze was not a
7 topic of conversation and where Mr. Hargreaves supposedly is
8 planning some crime with people there he doesn't even know, and
9 he says that Mr. -- he says that Mr. Weigand had a "good
10 relationship with the CEO of Wirecard."

11 And now guess what? Guess what? Not a single
12 transaction was processed through Wirecard that was ever
13 introduced at this trial.

14 And Agent Hupcher was asked: You don't see the name
15 Wirecard anywhere on the left-hand side, do you?

16 No.

17 The government showed you emails from Ruben Weigand's
18 laptop, but the government couldn't show you that those emails
19 were Eaze related. Email after email was about unrelated
20 business in Europe. No mention of specific merchants and
21 descriptors in this case.

22 And as for the government's claim that Mr. Weigand
23 made millions, not a single person took the stand, swore the
24 oath, and said a single word about how Mr. Weigand got paid or
25 that he received a dime. With all the tracing abilities of the

L3MHWEI4

Summation - Mr. Artan

1 FBI, nothing. The government showed you an array of financial
2 statements. Not a single bank record showed that he received
3 any money. Nothing.

4 The government promised to show you a ledger full of
5 profit calculations. In fact, this ledger full of profit
6 calculations was just two confusing documents that were added
7 to Mr. Weigand's laptop in 2020. You were shown them this
8 morning. There was no evidence of who prepared them, for what
9 purpose, what the numbers meant. Instead, what we have is that
10 every one of the wire confirmations that ended up in
11 Mr. Weigand's laptop in 2020, every dollar, every dollar, was
12 sent by Mr. Hargreaves' business associate Michele Furlan and
13 his company Spinwild. Months after Hargreaves is supposedly no
14 longer involved, when he's supposedly a white knight, when he's
15 supposedly living a clean life and working for the government,
16 his associate, Michele Furlan, is Spinwild, and Spinwild is
17 processing all of these transactions well after Mr. Hargreaves'
18 arrest.

19 So who is the witness that supposedly can make
20 Mr. Weigand into a knowing participant in defrauding U.S.
21 banks? Well, of course it's Oliver Hargreaves. We didn't hear
22 much about him this morning. And why not? I would guess
23 because he was caught in serious criminal conduct. He was
24 arrested here in Manhattan for extortion. He was facing 20
25 years on that alone, and he's now facing 90 years for the other

L3MHWEI4

Summation - Mr. Artan

1 charges he pled to. He was arrested for nothing -- nothing to
2 do with this case. He was trying to extort millions out of
3 some guy in the United Kingdom, and he was going to get a cut
4 of the \$30 million. And they were going to use despicable
5 means and threatening means to get the money.

6 And just two days after his arrest, the day after he
7 first came to court, understanding that he has to cooperate to
8 see his family again, he is debriefed for a few day about his
9 extortion and criminal involvements, knowing as a cooperator he
10 has to tell the government what they want to hear, which is
11 criminal conduct. Not a word about marijuana. The next day,
12 after more debriefing, more criminals galore, Hargreaves
13 happens to mention his attempt to process marijuana. Keep in
14 mind, as despicable with we know Mr. Hargreaves' conduct has
15 been, there's no reason to believe that Mr. Weigand or anyone
16 at Eaze or anybody involved in this case knew what a villain he
17 was and perhaps still is.

18 So Hargreaves, an extortionist, is allowed to go to
19 Spain to see his -- to live with his wife and child, and he is
20 cooperating his butt off for the government. He is going
21 around meeting people, taping calls, losing cell phones, doing
22 everything he can to satisfy the government. He couldn't even
23 get that right. He couldn't even stay out of trouble because
24 he had to go and steal money from his employer, Gary Murphy.
25 He stole money from Gary Murphy, and he said he was frightened

L3MHWEI4

Summation - Mr. Artan

1 of Gary Murphy.

2 The U.S. authorities bring him back to America, charge
3 him with more crimes, which is why he is now facing 90 years.
4 Imagine cooperating as much as possible or you feel the full
5 weight of the government's power. Imagine the pressure that
6 puts on someone. The strain of being arrested and facing
7 federal crimes is enormous. Just think of the anxiety, the
8 sleepless nights, the pits in the stomach of maybe going to
9 jail for a long time. He knew and he knows that he has to do
10 the most he can to help the government. And the law, you'll
11 hear, instructs us about witnesses like Hargreaves and other
12 witnesses with agreements. You'll hear from the jury
13 instructions that the motives of these witnesses must be
14 scrutinized with particular care and caution.

15 One of the attempts by Mr. Hargreaves to help himself
16 with the government was this May 2019 phone call to
17 Mr. Weigand. So let's set the stage of this phone call. In
18 the month prior, Kate Farmer, again, you know a member of the
19 Hargreaves team, sends out an Euprocessing process email about
20 domain hosting, telephone numbers, and ceasing operations, and
21 Mr. Hargreaves was copied on the email.

22 Now, the contents of the call is completely
23 inconsistent with Hargreaves' testimony that Hargreaves even
24 thought that Euprocessing was Ruben Weigand. Hargreaves brings
25 up the domain and hosting. He doesn't say: Oh, did you see

L3MHWEI4

Summation - Mr. Artan

1 the email? Mr. Weigand doesn't say: Oh, I saw the email. If
2 Mr. Hargreaves thought that Ruben Weigand was Euprocessing, he
3 would have said: I want to talk about that email. I want to
4 talk about what's going in. Instead he tells him cold, and
5 it's clear that Mr. Weigand didn't think -- didn't see the
6 email, and it's clear that Hargreaves didn't think he saw the
7 email. And even though it was Hargreaves' goal to coax out
8 incriminating statements out of Mr. Weigand, all he says is,
9 I'm not really involved. I just introduced some people.

10 OK. Now, think about that, I'm not really involved.
11 I just introduced some people. If Hargreaves is making this
12 call to get incriminating information against Mr. Weigand and
13 that's the perfect opportunity for him to say: Wait a minute.
14 That's not all you did. You were running this. You were
15 operational. You were the man. What are you talking about?
16 He doesn't say that. He says nothing, nothing about Ruben,
17 Ruben, Ruben being Euprocessing. He lets Mr. Weigand's
18 statement stand, and he was asked:

19 You never contradicted or corrected anything that
20 Mr. Weigand said, did you?

21 No, I did not.

22 And why didn't Hargreaves do that? Why didn't he try
23 to get admissions? Because whatever he would have done would
24 have been denied, and Hargreaves knew it.

25 Could I have a quick moment, please, your Honor?

L3MHWEI4

Summation - Mr. Artan

1 Could I have a quick moment, please?

2 THE COURT: Yes.

3 MR. ARTAN: Thank you, your Honor.

4 So think about the pressure Hargreaves was under to
5 give the government, to give the government, Mr. Weigand's head
6 on a platter, and all he gets is, I'm not really involved. I
7 just introduced some people. It lays bare the extent of
8 Mr. Weigand -- of Mr. Hargreaves' lies over and over again.
9 And when you scrutinize Hargreaves' motives with care and
10 caution, you see a self-interested witness who should not be
11 believed. And you can see it from his own taped testimony,
12 repeating lies, lies, lies. That's not proof beyond a
13 reasonable doubt. Speaking Mr. Weigand's name, "Ruben, Ruben,
14 Ruben" loudly, that doesn't create proof beyond a reasonable
15 doubt. Saying "banks, banks, banks" is meaningless because
16 unless you're clarifying what banks we're talking about, and
17 Mr. Weigand's only involvement was European merchant banks, not
18 U.S.-issuing banks.

19 So let's also look at Mr. Weigand's interrogation at
20 the airport, where he was arrested. And presumably, this was
21 supposed to be a big finish for the government. It was their
22 last item of evidence. Common sense would tell you that you
23 want to finish a trial on a high note. And instead, instead,
24 you see an example of the government asking you to presume
25 guilt instead of presuming innocence.

L3MHWEI4

Summation - Mr. Artan

1 So please recall the government's opening statement:
2 You'll hear from the law enforcement agent who arrested
3 Weigand. You'll hear the stories Weigand made up when he was
4 caught and how he lied and claimed he had never been involved
5 with Eaze, how he pretended he had learned about Eaze from
6 seeing it on a billboard.

7 I'm sure you all recall the recording and the way that
8 the agents tried to scare and pressure Mr. Weigand to say the
9 things they wanted to hear. He didn't succeed. Mr. Weigand
10 told the truth and stuck with it. The government's claiming
11 that his postarrest statements are proof of his lies and
12 cover-up. He's making up stories to cover up his nefarious
13 activities. They show the opposite. We heard from Agent
14 Shimko how Mr. Weigand was arrested at 6:30 p.m., after a long
15 flight. He had come from Europe, which is eight hours ahead,
16 which is 2:30 in the morning for him. We heard about the
17 duress of being arrested. He was in a closed room, and early
18 in the conversation you hear -- you see the following exchange:

19 You understand English and speak English, right?

20 His answer: I'm Okayish, I think.

21 Now, what the government's contending is that
22 Mr. Weigand, a German with Okayish English, is supposed to be
23 held to the same standard of what words mean as someone who
24 speaks English perfectly. I'll contend to you, even if he did
25 speak English perfectly, there's no evidence of lying here.

L3MHWEI4

Summation - Mr. Artan

1 So Mr. Weigand was asked about the company Eaze, and
2 specifically he's asked: When did you first learn about it?
3 How did it come to your attention? Mr. Weigand said he saw it
4 on a billboard advertisement in Los Angeles. And this is
5 supposed to be a big lie.

6 Well, pardon me. So then there's -- he goes on
7 further: Can you take me through how you first learned about
8 it? And again, billboard advertisement.

9 Here in the U.S.?

10 Yes, maybe two years ago.

11 Now, the government's contending this is a lie. But
12 recall early in the trial Michael Tassone, what he said about
13 billboards and Eaze, and you saw this photo. You saw this near
14 the beginning of the trial. Mr. Tassone said billboards were
15 everywhere, and the government is asking you to believe that
16 Ruben Weigand is lying to you when he said he saw it on a
17 billboard. Is that right? Is that a lie? Is it OK to say
18 he's lying when you don't have proof of it? Is it OK to say
19 it's a lie when it's based on total speculation and you have
20 proof right in front of you to the contrary?

21 So special agent Mahaffey then asked Mr. Weigand about
22 his supposed involvement with Eaze, and they had the following
23 exchange. So Mahaffey says: So you heard about the company,
24 and then take me through your involvement and what happened
25 there.

L3MHWEI4

Summation - Mr. Artan

1 And Mr. Weigand says: I have no involvement. I
2 just --

3 You have no involvement in Eaze? In Eaze.

4 Answer: No.

5 And as we heard from the opening, we heard today,
6 Mr. Weigand's supposedly lying when he says he wasn't involved
7 in Eaze. And we heard Jim Patterson testify Ruben Weigand
8 never met the CEO, was never an employee, was never paid any
9 money for Eaze -- from Eaze, by Eaze, has never owned stock in
10 Eaze. The truth is he was never involved in Eaze, and we have
11 this exchange with Mr. Patterson that says all of that.

12 Then let's turn to the next lie, the next supposed
13 lie. The government's been contending that
14 euprocessing@protonmail.com is Mr. Weigand's email address, and
15 can we put this to rest? We know from Darcy Cozzetto and
16 Michael Tassone and the emails themselves that Euprocessing is
17 not Ruben Weigand.

18 And Agent Mahaffey has this exchange:

19 How do you communicate with people?

20 Email mainly.

21 Gotcha. What's your email address?

22 My business email?

23 Sure.

24 It's on our website. It's rw@paymentconsultants.com.

25 Do you have any others?

L3MHWEI4

Summation - Mr. Artan

1 Plenty on my private.

2 What's your private?

3 It's first name, last name at google.com.

4 Did you use the email address

5 euprocessing@protonmail.com?

6 No.

7 And then Mr. Shimko says: Everybody knows it's your
8 email address.

9 Now, first, let's point out some issues here.

10 Number one, there's not a single bit of evidence as to how the
11 Euprocessing email started, who opened it, nothing like that.
12 Nothing like actual evidence, evidence you'd want to hear in a
13 trial, something a little more concrete than Oliver Hargreaves
14 saying Ruben, Ruben, Ruben.

15 The everybody that Shimko is referring to is Oliver
16 Hargreaves, of course, and no one else, because there was no
17 one else in the case at that point. Everything they heard
18 about Mr. Weigand, everything they heard, was from Oliver
19 Hargreaves. And Mahaffey and Shimko try to pressure Weigand
20 into saying it's his email, and he says it's obviously not my
21 email address. Well, he stuck with the truth. He said it
22 wasn't his email address.

23 So when it comes to what Mr. Weigand was knowing or
24 doing, we keep falling back to Oliver Hargreaves who believed
25 that Euprocessing was Ruben Weigand. And in fact, nearly every

L3MHWEI4

Summation - Mr. Artan

1 Euprocessing email was from Kate Farmer or Michele Furlan, but
2 still somehow Mr. Hargreaves knows that they were communicating
3 with Ruben Weigand. I'll say it one last time. We all know it
4 was Andreas. Who's more believable? Oliver Hargreaves or
5 Darcy Cozzetto or Michael Tassone? I think the answer's
6 obvious.

7 It was Andreas, and she described Andreas as president
8 of a German bank who had been terminally ill, and we know that
9 Hargreaves described Andreas as being unwell. She's talking
10 about Andreas, and she said in no uncertain terms it was
11 Andreas. Maybe I'm wrong, but in the questioning during trial,
12 it was almost as if the government was trying to make Andreas
13 into a ghost, yet everyone describes him consistently and
14 places him in the scenarios that we're talking about. They all
15 talk about his -- well, two of them talk about his ill health.
16 Hargreaves said he was going to be the ISO connecting the
17 acquiring bank, the acquiring banks. It's just consistent.

18 To hit the issue further home, we have Agent Shimko
19 talking about not just Hargreaves but data points, data points
20 that supposedly show that Mr. Weigand is Euprocessing, but what
21 were these data points? He was asked about almost 200 emails
22 with Euprocessing, and he was asked whether only one of the
23 emails, only one, was signed off as Ruben. And his response
24 was: I'm not sure of the number. I know there's at least one,
25 at least one. This was the big finish to the government's

L3MHWEI4

Summation - Mr. Artan

1 case. It was supposed to be all this proof of Mr. Weigand's
2 statements being false, but there was no big finish. "At least
3 one" is not a big finish.

4 And looking back at the inflated claims of the
5 government, you can easily see they're misleading; they're
6 unreliable. The government's contentions are based on
7 out-of-context, cherry-picked excerpts. His close involvement?
8 There was no -- there was no involvement with Eaze. He's
9 barely mentioned. The big amount of data on the computer? It
10 was created by someone else, and it was on his computer no
11 sooner than January 2020, which is months and months and months
12 after the whole situation with Eaze was shut down. And
13 Hargreaves' claims about how important Mr. Weigand is, and what
14 does he get in the phone call? I'm not really involved. I
15 just introduced some people. Not one word from a single
16 witness that Mr. Weigand had any concern or thought about U.S.
17 banks.

18 Now, what the government perhaps will say is, well,
19 Mr. Weigand must have known that it would affect U.S. banks or
20 he would have known the effect it would have had on U.S. banks.
21 They're asking you -- and this is the last time I'll say it --
22 they're asking you to presume guilt. "Would have known" or
23 "must have known" is not proof beyond a reasonable doubt. If
24 you presume innocence, as required by the law, Ruben Weigand is
25 not guilty.

L3MHWEI4

Summation - Mr. Artan

1 Let me just go back to a couple words -- say a few
2 words about materiality and these see no evil --

3 THE COURT: Counsel, just so you're aware, you have
4 about five minutes left.

5 MR. ARTAN: That's about how much I have, your Honor.

6 So let me say a few words about materiality with these
7 see no evil, hear no evil, speak no evil U.S.-issuing banks.
8 Now, while you're going to hear more about this issue from
9 Mr. Tayback, I want to reiterate, this issue is a complete
10 defense against the bank fraud charge. To put it simply,
11 U.S.-issuing banks release the money based on cardholder
12 purchase without any knowledge of MCCs or descriptors. And on
13 top of that, you know the U.S. banks do not care as long as
14 they make their fees, which they did in huge numbers, they just
15 do not care. And for those reasons also Mr. Weigand is not
16 guilty.

17 Now, as I mentioned at the start, I want to say a
18 little bit about the importance of jurors to America, to the
19 American justice system. Whenever I enter a federal court --
20 and I've been doing it as a lawyer for 40 years -- I'm always
21 taken by the surroundings. You know, these courthouses are
22 always impressive. They're opulent, majestic. But what I want
23 to say is that what we're surrounded by is meaningless in
24 comparison to what you as jurors do in this process. This
25 system of justice in America is not about the halls of justice.

L3MHWEI4

Summation - Mr. Artan

1 It's not about federal agents or prosecutors or defense
2 lawyers. It's about you. It's about you. And while these
3 walls may last for decades, justice, justice itself, is
4 ephemeral. It only lasts as long as it is given, and it only
5 is given by you as jurors. It only comes to life when you as
6 jurors follow the law and apply the law. As Dr. King wrote
7 from a Birmingham, Alabama, jail in 1963: "Injustice anywhere
8 is a threat to justice everywhere. We are caught in an
9 inescapable network of mutuality, tied in a single garment of
10 destiny. Whatever affects one directly, affects all
11 indirectly." Those words affect us all. Justice lasts as long
12 as this trial and as long as your roles in this trial. It's
13 like a line drawn in the sand, and failing to draw that line is
14 a threat to justice. But drawing the line protects us all, and
15 what I'm asking you to do is to draw that line in the sand and
16 do justice now. Do justice for Mr. Weigand who's entitled to
17 the protection of the presumption of innocence. The government
18 has to prove their case beyond a reasonable doubt, and if you
19 look at the case in that context, the just outcome, the line in
20 the sand, is that Mr. Weigand is not guilty.

21 Thank you.

22 THE COURT: Thank you very much.

23 All right. Ladies and gentlemen, we'll take our lunch
24 break at this time. Just so we can finish everything today,
25 I'll ask you to maybe make lunch about 50 minutes instead of a

L3MHWEI4

1 full hour, but we'll resume in about 50 minutes.

2 (Jury excused)

3 THE COURT: Please be seated.

4 Anything counsel needs to raise with the Court?

5 MS. LA MORTE: No, your Honor.

6 MR. TAYBACK: No, your Honor.

7 MR. ARTAN: No, your Honor.

8 THE COURT: My law clerk has mentioned to me that I
9 never gave on the record my reasons for excluding the testimony
10 of Stephen Mott, M-o-t-t, so here it is.

11 Mott was offered as an expert on three topics. The
12 first topic was "the influence that the credit card networks
13 and the issuing banks have over the ISOs with respect to the
14 creation of MCCs." This topic was not remotely adequately
15 disclosed in the expert disclosures for Mr. Mott. I also have
16 questions about whether he was really in a position to testify
17 to that and what his methodology was, but the failure to
18 adequately disclose the basis for this was sufficient to
19 exclude his testimony on that respect.

20 The second topic was "the jurisdictional constraints
21 imposed on non-U.S.-acquiring banks by Visa and Mastercard."
22 The evidence on this topic seems to me to have been irrelevant,
23 and even if marginally relevant, confusing. So I excluded it
24 under Rules 401 and 403.

25 The final topic was testimony to the effect that

L3MHWEI4

1 "Issuing banks are always fully compensated even if the event
2 of chargebacks." I'm not sure this called for expert
3 testimony. I'm not sure he had an adequate basis for alleging
4 that, but in any event, to the extent it was relevant to any
5 issue in this case, it would have been cumulative because there
6 was already substantial evidence on that subject.

7 So have a good lunch. We'll see you in 45 minutes.

8 (Lunch recess)

9 (Continued on next page)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

L3MPWEI5

Summation - Mr. Tayback

A F T E R N O O N S E S S I O N

1:46 P.M.

(Trial resumed; jury not present)

THE COURT: Please be seated.

All right. The jury is on their way up.

MR. TAYBACK: Your Honor, Mr. Akhavan is not here.

THE COURT: Oh.

(Pause)

While we're waiting, let me remind all counsel that we need the thumb drive by the end of today.

MR. TAYBACK: I believe we have a copy.

Your Honor, may I ask the clerk, is this ready to go, or do you need to --

THE LAW CLERK: Oh, thank you. Thank you.

(Pause)

THE DEPUTY CLERK: Jury entering the courtroom.

(Jury present)

THE COURT: Please be seated.

All right. We'll hear now from counsel for Mr. Akhavan.

MR. TAYBACK: Good afternoon. There's an old famous movie called "Casablanca" with Humphrey Bogart. Maybe you've seen it. It takes place during World War II, in the city of Casablanca, and Casablanca was the capital of Morocco, which was a French colony at the time. During the movie, Morocco was

L3MPWEI5

Summation - Mr. Tayback

1 under German occupation after the french had been defeated.
2 Humphrey Bogart is the star of the movie, and he plays an
3 American running a cafe, bar and a gambling casino in
4 Casablanca called Rick's.

5 It really was the lively center of nightlife in that
6 community, and the town was run by a character named Captain
7 Renault. He was a French officer, who enjoyed the gambling and
8 the nightlife as much as anybody, but gambling was officially
9 banned at that time in Morocco under the German occupation. So
10 Captain Renault had to pretend that -- whenever the authorities
11 would show up, he had to pretend that gambling wasn't going on.

12 Now, I'm going to show you a very short clip from that
13 movie, and I'll talk to you about it afterwards. Captain
14 Renault is the gentleman on the left there.

15 (Video being played)

16 THE COURT: Now, Mr. Tayback, we'll always have Paris.

17 MR. TAYBACK: That's true, your Honor. Your Honor has
18 clearly seen the film.

19 Of course, even though Captain Renault says that he's
20 shocked, shocked to learn that there was gambling in this
21 establishment, in fact, he wasn't shocked at all. He was
22 totally in the know. He even collected his winnings at the end
23 by the gambling, but he had to pretend to be shocked.

24 That's a great scene from that movie, which is a
25 fantastic movie, but it says a lot about the hypocrisy in the

L3MPWEI5

Summation - Mr. Tayback

1 heart of this case, the heart of the evidence in this case,
2 because what this case is about is the banks, the U.S. issuing
3 banks and the credit card companies having set up a system that
4 is designed to obscure the purchase of marijuana by credit and
5 debit card.

6 Like Captain Renault, they are plenty happy to have
7 customers use their cards to make purchases of marijuana. They
8 make money. The customers get what they want, and marijuana
9 was and is widely available and legal under state law in
10 California and Oregon, during that time period. But they want
11 to have plausible deniability. So they could say, if ever
12 called upon, like Captain Renault in Casablanca, that they are
13 shocked, shocked to learn that their credit and debit card
14 customers are purchasing marijuana.

15 Now, that analogy applies for a few reasons here, but
16 first, before I get into that, I need to comment on the jury
17 instructions that you are going to receive tomorrow from the
18 Court.

19 You've heard the government and Mr. Weigand's counsel
20 speak during closing arguments, and they each made reference to
21 the burden of proof, but I want to focus on a specific part of
22 the law you're going to be given. I'll address the burden
23 briefly now.

24 As Mr. Weigand's counsel explained, the burden of
25 proof in a criminal case is the highest burden that exists in

L3MPWEI5

Summation - Mr. Tayback

1 the United States. It's beyond a reasonable doubt as to each
2 and every element of an offense, and I'm going to explain what
3 those elements mean and the Court -- rather, the government
4 spoke about a little bit earlier, but there's a reason for
5 that.

6 There's a reason that a jury, like yourselves, is
7 tasked with making that determination because, for hundreds of
8 years, our system has been based on the principle that only a
9 jury of peers, 12 people drawn from the community, can be the
10 best guard against government overreaching.

11 Now, the government here has not met the burden of
12 proof, not proven its case beyond a reasonable doubt. It
13 hasn't come close to satisfying it, really, and I'm going to
14 explain to you why, but that decision -- that decision is yours
15 and yours alone. You are the jury, and only you get to decide
16 what is and is not proof beyond a reasonable doubt of a crime,
17 and not any crime but the specific crime that's charged here,
18 which is conspiracy to commit bank fraud.

19 Now, although the government discussed the elements of
20 the offense, I'm going to focus on a few portions that they did
21 not discuss at length. This is -- the jury instructions you'll
22 receive tomorrow are numbered and, of course, you should
23 consider all the instructions as an entirety, a complete whole,
24 but for the purposes of my argument, I am going to focus on
25 certain portions of them.

L3MPWEI5

Summation - Mr. Tayback

1 So, for example, jury instruction No. 11, which
2 outlines what a conspiracy is, it says the object of the
3 charged conspiracy is federal bank fraud. So what does that
4 mean, and what does it mean for you? Well, if you go to jury
5 instruction 12, which you'll get tomorrow, it gives you the
6 elements of what federal bank fraud is.

7 And one of those elements -- one of those elements
8 that is the object of the alleged conspiracy here is that the
9 federally insured bank or credit union was induced to authorize
10 the transactions by means of a misrepresentation. That is to
11 say, the alleged conspiracy had to be intended to induce those
12 federally insured banks or credit unions to authorize the
13 transactions by means of the alleged misrepresentations.

14 You can take that down, Mr. McLeod.

15 Now, I'm going to say right upfront that the
16 government's case fails on that point alone, on that element
17 alone, designed to induce these banks to authorize transactions
18 by means of a misrepresentations. You've heard during this
19 trial, this three-week plus trial, from three representatives
20 of three banks, three U.S. issuing banks, Bank of America,
21 Actors Credit Union and Citibank.

22 And whatever weight you might give the government's
23 evidence of misrepresentations -- and I'm going to address
24 those later -- the information provided to the European
25 merchants and acquiring banks, sometimes those terms were used

L3MPWEI5

Summation - Mr. Tayback

1 interchangeably during the course of this trial, one thing is
2 clear, the U.S. issuing banks don't know and really don't care
3 what their cardholders are buying.

4 All they care about is that it's the cardholder using
5 the card and that that cardholder has the money available to
6 pay for the purchase. Virtually none of the information that
7 you heard so much about being given to these European acquiring
8 banks actually ever goes to the U.S. issuing banks, let alone
9 gets used by them in any way whatsoever. They don't even have
10 it, the websites, the business plans, all of that.

11 Remember the quote from Mr. Steinbach, who was the
12 representative of Citibank: If it's Mr. Steinbach, and I'm
13 within the credit limit, I can do whatever I want. That was
14 Citibank, and that's exactly their policy, exactly what they do
15 when it comes to authorizing a transaction. That basically
16 says it right there.

17 So what does that say? Well, the four lies that the
18 government highlighted, four alleged lies that they focused on
19 in closing argument, do not matter to the banks in deciding to
20 authorize a transaction; the merchant name, the MCC, merchant
21 category code, the descriptor or the location.

22 And let's look at the testimony from the next witness
23 who talked about this topic from a bank, from a credit union,
24 Chuck Brown from Actors:

25 "Q. As long as you're convinced that they have money or

L3MPWEI5

Summation - Mr. Tayback

1 overdraft protection and that they -- that it's their
2 transaction, correct?

3 "A. Yes."

4 He goes on to say: We wouldn't even know whether that
5 was their transaction unless they notified us that it wasn't.
6 That is to say, Actors, simply all they require is that the
7 cardholder had the funds when that card is used and, of course,
8 that makes sense because these transactions are authorized in a
9 fraction of a second.

10 Mr. Clow, who was the representative of Bank of
11 America, said that a transaction takes place in less than a
12 second. That's the amount of time that's dedicated to
13 authorizing the transactions by the U.S. issuing banks.

14 It's not possible, it's not plausible, it's not the
15 fact that any of the information that the government has spent
16 so much time contending was the misrepresentation designed to
17 induce those banks to authorize transactions could have
18 influenced them. It simply isn't consistent with the
19 testimony, the evidence or reality.

20 But equally as telling, equally as telling, is that of
21 the many, many transactions for marijuana that you saw evidence
22 of in this case, where not one, not a single one customer using
23 a credit or debit card actually was declined or disallowed
24 because they were trying to buy marijuana. You heard nothing
25 like that. Zero. Now, that necessarily means that the alleged

L3MPWEI5

Summation - Mr. Tayback

1 misrepresentations, such as they are, were not designed to
2 induce any U.S. bank to authorize any transaction because the
3 information they received just isn't capable of that.

4 So let's discuss the limited information that the U.S.
5 banks actually do receive, and some of that is something that
6 the government talked about in their closing argument.

7 Merchant category code, or MCC, well, you heard throughout this
8 trial that there is not a merchant category code for marijuana.
9 So the MCC clearly is not used to filter out transactions that
10 might be for marijuana.

11 Mr. Steinbach admitted as much in his testimony. In
12 fact, you learned that an MCC is not even product-specific
13 code. Mr. Verdeschi, from MasterCard, explained it's really
14 focused on categories. Remember, the banks don't get a list of
15 everything every customer buys. They don't know if you buy
16 toothpaste or Advil or beer. Frankly, it's not their business
17 to know, and the MCCs don't purport to tell them that.

18 Though you heard that there's nothing stopping the
19 credit card companies from creating an MCC that would be
20 specific to marijuana, like there is for online gambling, but
21 for some reason the credit card companies have never asked for
22 one. You've heard that from Mr. Elliott, even though new MCCs
23 are introduced at various points in time. And, in fact, there
24 was a Visa document that specifically goes to that; so Visa
25 could seek such an MCC, but they choose not to.

L3MPWEI5

Summation - Mr. Tayback

1 I'm going to ask you now to look at -- consider
2 descriptor names or merchant names. You've seen ample evidence
3 that the descriptor -- that is the way the transaction is
4 described in the bank statement -- is literally meaningless to
5 the U.S. bank's approval process. Actors' witness testified
6 that the bank doesn't look at the MCC or the descriptor.

7 The banks approve transactions that say Eaze, which
8 tells you a lot about what the bank's state of mind is, and
9 whether the alleged misrepresentations were -- whether they're
10 designed to influence these banks.

11 So what you're seeing now is the transaction records
12 from the purchase by the private investigator, Dan Whelan, who
13 testified just last Friday about how he went online through
14 Eaze, made a purchase using his Bank of America debit card, and
15 received the products he bought, and obtained a bank statement
16 subsequent to that that specifically outlines Eaze, check card,
17 Circle Wallet Eaze London.

18 It tells the banks exactly, if they cared, exactly
19 what it is that this customer is using, what the service is.
20 They don't look at that. They don't consider that.

21 In fact, we also know from the evidence in this case
22 that there can be descriptors that are literally gibberish,
23 like the ones we looked at from Mr. Brown's bank, where he
24 produced those bank records to this Court for the purpose of
25 evaluating this case.

L3MPWEI5

Summation - Mr. Tayback

1 Descriptors like FYESCT or TSTSKV, they tell you
2 nothing about the transaction. These are the descriptors from
3 those bank statements. So these banks get descriptors that
4 could mean nothing, and descriptors that clearly specify, for
5 those who might be interested that it's Eaze, a company that
6 delivers marijuana. And yet, the banks don't care either way.

7 Why? Well, the central purpose of a descriptor is for
8 the customer to recognize the transaction. It's not even for
9 the banks. Mr. Elliott, the representative from Visa, told you
10 that. And you may remember that that's exactly what you saw
11 was Mr. Akhavan's emphasis for descriptors in the various chats
12 and e-mails that the government introduced, that the purpose of
13 a descriptor is simply to remind the customer, oh, yeah, that's
14 a transaction that I engaged in.

15 It's not designed to influence the banks or induce
16 them to do anything because the banks don't and can't do
17 anything with it. But the truth is that the evidence in this
18 trial has shown you that the banks don't care what you buy, as
19 long as it's you and you have the money, and mostly that you
20 have the money.

21 At most, at most, things like the descriptor or the
22 merchant name -- which, by the way, we all know merchant names
23 can be anything. Google doesn't tell you anything about what
24 they sell. Apple doesn't sell apples. Joe's could be a coffee
25 shop, it could be a bookstore, or it could be a marijuana

L3MPWEI5

Summation - Mr. Tayback

1 dispensary.

2 The only way these things get used are not to
3 authorize transactions, as the charge would require, but to
4 look back, to look back after the fact, when and if a customer
5 doesn't recognize a charge and they contact -- and they reach
6 back to try to find out what this charge was. But a look back
7 is not what the federal bank fraud statute is looking at, or
8 the conspiracy to commit a federal bank fraud charge is.
9 That's not the element that's required.

10 The question is whether the alleged misrepresentations
11 were designed to induce a U.S. bank to authorize the
12 transactions. These just weren't that. They can't be that,
13 and Mr. Steinbach's testimony tells you why exactly they aren't
14 that. That says it all. On that basis alone, I feel like I
15 could sit down. You should find the government's case lacking.
16 The object of the alleged conspiracy wasn't to get the U.S.
17 banks to authorize transactions, period.

18 But, maybe unfortunately for you, I'm not going to sit
19 down because there is more to say about this case. And that's
20 really a segue into another fundamental problem with the
21 government's case, which is materiality. You heard some
22 reference to materiality. Mr. Weigand's counsel argued and
23 even the government addressed it a bit. But I want to pick up
24 where those conversations, where those arguments left off.

25 What is meant by materiality? Well, you'll receive a

L3MPWEI5

Summation - Mr. Tayback

1 jury instruction, again tomorrow, jury instruction No. 12, and
2 it identifies materiality as an element, and then it has a
3 small paragraph that explains materiality.

4 The relevant portion that I want to talk to you about
5 of materiality are misrepresentations would be material if, had
6 the banker known that the purchases were disguised and really
7 were for marijuana, such knowledge would be reasonably likely
8 to influence a reasonable banker in deciding whether to
9 authorize the purchases. That's the test for materiality.

10 Now, for all the reasons I've just discussed, and more
11 which I'll explain in the course of my argument, the government
12 has not proven beyond a reasonable doubt and cannot prove at
13 all that these banks care at all whether the transaction is for
14 marijuana in deciding whether to authorize the purchases.

15 The government is right to this extent, you did in
16 fact hear from several bank witnesses that said that they would
17 not knowingly process marijuana transactions. They did say
18 that. But as my partner, Mr. Burck, said in his opening
19 statement, and as the government quoted, actions speak louder
20 than words.

21 And you'll receive another jury instruction, this is
22 at jury instruction No. 7, it's a longer one and I'm not going
23 to highlight any particular portions of it, but I'm going to
24 ask that you pay special attention to it, which is the
25 determination of witness credibility. That's your job.

L3MPWEI5

Summation - Mr. Tayback

1 Your job, and your job alone, is to determine what,
2 from what witness is credible and what's not, what weight to
3 give it and what weight not to give it. Because we all know,
4 we all know from life experience and common sense is that just
5 because someone says something, doesn't make it true or
6 correct, or that it deserves any weight in light of the actual
7 decision that you are being asked to make.

8 You, as a jury, are the sole judges of witness
9 credibility, and here's where the Casablanca reference that I
10 started with really comes in. The banks have done nothing
11 meaningful, and they do nothing meaningful to block approving
12 marijuana transactions. You may remember they don't track it.
13 They don't use an MCC to identify those transactions, though
14 they could. They don't screen their statements, their bank
15 statements, for known marijuana places. We see Eaze all over
16 the place. They don't terminate any cardholders.

17 In fact, if you go back to that last slide,
18 Mr. McLeod, we heard testimony from all three bank witnesses
19 that they can't identify any cardholder who's ever been
20 terminated for ever having purchased marijuana using one of
21 their cards, including people that we saw their bank statements
22 here today.

23 In fact, they go one step further. They don't even
24 call and warn their cardholders to stop buying marijuana once
25 they know that they have. They don't say: Don't do that in

L3MPWEI5

Summation - Mr. Tayback

1 the future. Mr. Steinbach, Mr. Brown were both asked that
2 question. Those conversations do not occur.

3 And that's consistent with the private investigator
4 who purchased marijuana through Eaze using his Bank of America
5 credit card, debit card and was not contacted by the bank at
6 all. They don't do those things, which would seem logical
7 things to do if you really cared about stopping your cardholder
8 from buying marijuana on their cards.

9 But there's more proof to that. You may remember that
10 Citibank's witness testified about their very large budget for
11 policing fraud and the security of their card system, \$289
12 million, I think, plus maybe \$18 million in capital
13 expenditures -- I'm sorry, \$278 million, of which zero was
14 spent on marijuana, zero.

15 And there's more still. Because what you heard during
16 the final days of this trial is that banks are allowing their
17 cardholders to purchase marijuana on debit cards right now,
18 right this very second. Do you remember there was testimony on
19 Friday -- as well as a little bit through the Bank of America
20 witness, Mr. Clow, a couple of weeks ago -- that shows that all
21 of these same banks and credit card companies are allowing
22 their debit cards to be used to buy marijuana from Eaze through
23 a company called Circle based in the UK.

24 Circle is just another workaround, just another
25 end-around to allow the banks and the credit card companies to

L3MPWEI5

Summation - Mr. Tayback

1 allow their cardholders, their customers, to use their cards to
2 buy marijuana and, yet, allow the banks to maintain plausible
3 deniability, just like Captain Renault.

4 You heard from the private investigator, Dan Whelan,
5 on Friday again, who went online and bought marijuana from
6 Eaze, that it's just like using any other bank card. He input
7 his information, he made his order, his card was debited in the
8 amount of his purchase, and we actually learned that Bank of
9 America also adds an international transaction fee of several
10 dollars. And why was that? Well, that's because, get this,
11 Circle, in processing Eaze transactions, actually uses the same
12 European processing bank that Eaze previously used during the
13 time period that the government contends was illegal.

14 I'm showing you now two slides, one is the ECP. That
15 is, the E-Comprocessing for the current transactions for
16 Circle. That's the one on the top. You can see the merchant
17 identified as Circle, and the one on the bottom.
18 E-Comprocessing, also in the UK, United Kingdom.

19 The transaction went through. Even though it's the
20 UK, the location being something that the government has now
21 argued, perhaps realizing that some of the other theories
22 they're putting forward aren't meritorious, given what little
23 information the banks use to authorize a transaction, the
24 location is also a misleading piece of information because it
25 doesn't get considered in authorizing the transaction. The

L3MPWEI5

Summation - Mr. Tayback

1 UK -- the UK is not a trigger.

2 So what does that tell you? Well, it tells you the
3 customer and, therefore, his bank, get a bank statement
4 ultimately that reflects all of this, the location, that in
5 fact it's Eaze, what is now known as a marijuana distributor,
6 widely known, and it's reflected in all of these bank
7 statements. This is a compilation of the various bank
8 statements that came in last week that reflect Eaze
9 transactions through Circle, telling you that the banks don't
10 care.

11 But you know what else is striking about this? This
12 process is almost exactly like what customers got when Eaze
13 began working with Mr. Akhavan. So, for example, in the
14 government's theory, there was a time period where the
15 descriptor -- current time, it's Circle; back then, something
16 like Onlinebiller or Easydelivery -- that that was not
17 adequate, that that was deceptive.

18 Well, those customers -- you remember Mr. Patterson's
19 testimony, that when the customer bought on Eaze, they were
20 told that they would receive a descriptor on their bank
21 statement would be Onlinebiller.net; so that there was no
22 confusion because they were purchasing on Eaze.

23 And then there's a subsequent one from 2018 that's in
24 evidence as Exhibit GX2313, that shows when they used the
25 descriptor myEZdelivery, that they would receive a reminder

L3MPWEI5

Summation - Mr. Tayback

1 that that's what they're going to see as a descriptor when they
2 bought from Eaze.

3 And what does Circle do? Circle says -- and we know
4 this from Mr. Whelan's testimony, and this is the screenshot of
5 the screen that came in when he testified -- it tells them
6 Circle Wallet, remember, you'll see a charge from Circle Wallet
7 star Eaze. It's the same thing.

8 There's no difference between what Eaze was doing in
9 2016 to 2019 and what it's doing today. It's still selling
10 marijuana online to cardholders of U.S. issuing banks over the
11 Visa and MasterCard networks, and the banks all know it. That
12 is, of course, completely hypocritical, but it also has the
13 government, frankly, tied in notes.

14 We heard from the Bank of America and Visa witnesses
15 that, lo and behold, now that it came up at this trial, as
16 though this is the first time anybody could possibly be aware
17 of it, that they would be investigating it, meaning they would
18 investigate the Eaze transactions through Circle. That was two
19 weeks ago when that first came up through, I think, the Bank of
20 America witness. Two weeks ago. That's convenient.

21 But when Circle testified yesterday -- or Friday, the
22 government's cross-examination was more along the lines of:
23 Well, what you do is different because it converts your cash
24 into a cryptocurrency, and then that allows you to buy the
25 marijuana, like a magic trick. I believe Mr. Weigand's lawyer

L3MPWEI5

Summation - Mr. Tayback

1 used the magic trick analogy, but it's apt.

2 It's like a magic trick, for a California version of
3 Harry Potter, I suppose, where, abracadabra, your purchase of
4 marijuana is not actually your cash. It's now cryptocurrency
5 and, boom, now it's your cash and it's converted to marijuana
6 immediately and that makes it all okay. It's not really your
7 debit card being used to buy marijuana. It's some magical
8 cryptocurrency that's been instantaneously converted from U.S.
9 dollars into something else.

10 Well, when it makes that argument, the government is
11 really asking you to check your common sense at the door
12 because you heard exactly how that transaction works from
13 Mr. Whelan. That transaction is just like any other debit card
14 transaction. You put in your number. You get your product,
15 and you get debited. And it's hard to imagine that the banks
16 don't know it's marijuana when they see this on their bank
17 statement, Circle Wallet star Eaze.

18 Or maybe the government's theory is that because it
19 says Circle Wallet before the word Eaze, it's all okay for the
20 banks to know it's actually marijuana because somehow that's
21 some plausible deniability, some distance between them and the
22 marijuana purchase that they seem so up in arms about,
23 according to the government's theory. Who knows what the
24 theory is right now?

25 But the evidence shows that hundreds and hundreds of

L3MPWEI5

Summation - Mr. Tayback

1 banks, almost a thousand banks, U.S. issuing banks, have
2 permitted their debit cards to be used to buy marijuana from
3 Eaze through Circle. This is the list, it's in evidence,
4 HAX14008, a list of all of the U.S. issuing banks that have
5 processed Eaze transactions through Circle, and they do it to
6 this very day, tens of millions of dollars of marijuana sales
7 by Circle/Eaze using debit cards over just the last nine
8 months.

9 Mr. Reginatto, the representative of Circle, was asked
10 roughly how much it was like, and it's about \$50 million. And
11 it doesn't matter one bit to those banks that it's marijuana,
12 even though some, like Bank of America and Citibank, claim that
13 they permit no transactions whatsoever involving marijuana.
14 Yet, those banks and others have processed thousands and
15 thousands of these kinds of transactions for marijuana, these
16 Circle/Eaze transactions.

17 In fact, we've highlighted here references to all the
18 banks that actually testified, the three banks that testified,
19 Bank of America, Actors and Citi, as well as Wells Fargo, and
20 I'll talk about them in a little bit as well. Marijuana is big
21 business, and it's big business for everybody involved,
22 including the banks. And we all know that money talks.

23 In fact, during this trial, during the last few days
24 of the trial, we also learned from the Circle witness that
25 Visa, even though they're purportedly investigating now

L3MPWEI5

Summation - Mr. Tayback

1 Circle's processing of transactions with Eaze, also had a
2 partnership with Circle. So the company that they think
3 they're investigating with respect to the processing of Eaze
4 transactions is, in fact, a partner of Visa's, which makes it
5 even more inexplicable, if you ask yourself.

6 What happened in the last two weeks that prompted this
7 so-called investigation? And is this investigation real or
8 not? Well, I'll take that one step further, and this, by the
9 way, is from a pause on this slide right here because that
10 idea, the idea that they're investigating them and the idea
11 that somehow it's different, can't be reconciled with Visa's
12 own rules.

13 Because Visa's own rules provide that -- they say
14 we -- Visa prohibits all transactions involving the purchase
15 and sale of marijuana. Disguising the transaction as a gift
16 card or other quasi-cash -- "quasi-cash" being the term
17 there -- violates Visa rules. Quasi-cash is another word for
18 cryptocurrency, which is what Mr. Reginatto described the
19 business has. And he says, in his testimony: So beneath it,
20 the merchant category code is 6540? Yes. And you testified
21 that that is the merchant category code that corresponds with a
22 stored value card purchase or load, correct? Yes -- or
23 correct. Is a stored value card purchase or load also
24 sometimes referred to as quasi-cash? Yes, I believe I've seen
25 that term.

L3MPWEI5

Summation - Mr. Tayback

1 So Visa's position is, we prohibit marijuana; yet, we
2 have a partnership with Circle. Yet, Circle is engaged in
3 transactions with Eaze that apparently, on its face, violates
4 one of Visa's other policies. And yet, maybe now we're kind of
5 going to investigate them because we've been called on the
6 carpet here during the course of this trial.

7 Buying marijuana with a debit card through Circle from
8 Eaze is a distinction without a difference, from that that's
9 happened in the course of this case.

10 But most importantly for your work here, for your work
11 as a jury, is what does this tell you except that the banks
12 don't actually care that its cardholders buy marijuana.
13 They're happy to process Eaze transactions knowing exactly what
14 they are. They're happy to look the other way. They're happy
15 to take whatever fees are available, and those fees add up.
16 And then when the government calls, like Captain Renault, you
17 can still say that you're shocked, shocked to learn it's
18 marijuana, and then pocket your winnings.

19 Actions speak louder than words, and that's what
20 Mr. Burck promised at the beginning, and that's what the
21 evidence, I believe, has shown during the course of this case.

22 But I want to come back to how that, again, relates to
23 the job that you're being asked to do. How does it relate to
24 the jury instructions? Because your job here is to apply the
25 law that the Court is going to give you to the facts as you

L3MPWEI5

Summation - Mr. Tayback

1 find them, what you find to be plausible, implausible,
2 reasonable, unreasonable, credible, incredibility. It all
3 comes back to that element of materiality. Reasonably likely
4 to influence a reasonable banker in deciding whether to
5 authorize the purchases.

6 Remember, the government must prove beyond a
7 reasonable doubt the alleged misrepresentations were material.
8 Even if you assume that they're all misrepresentations, even if
9 you assume the worst, they have to show they're material. The
10 evidence here does not allow you to do that. It shows
11 unequivocally that these banks will process marijuana
12 transactions knowing darn well it's marijuana.

13 The accurate information, accurate, completely candid
14 information, saying I am selling marijuana -- if the descriptor
15 said: I am selling marijuana to your customer, would not have
16 mattered because they don't care. What they want is plausible
17 deniability, but the actual information they get does not
18 affect their decision to authorize. They don't care and,
19 therefore, it's not material.

20 Now, you know, as lawyers, we try to anticipate what
21 the other side is going to argue. So I wasn't surprised when
22 the government argued, well, look, of course, the banks want
23 accurate information. Of course, the banks want accurate
24 information. But that's not the test. The test isn't, in a
25 perfect world, would the banks want accurate information?

L3MPWEI5

Summation - Mr. Tayback

1 That's not the element. That's not the element of the charge,
2 and it's not the charge that these defendants are facing.

3 The element is reasonably likely to influence a
4 reasonable banker in deciding whether to authorize the
5 transaction, and this is just the U.S. issuing banks we're
6 talking about here, not Visa, not MasterCard and none of the
7 European banks you've heard about, which is also in the jury
8 instructions.

9 If you could bring that one up.

10 You'll see that the Court will instruct you tomorrow,
11 as part of jury instruction 12, that banks and credit unions
12 outside the United States are not federally insured, nor are
13 credit card companies.

14 So what that means is the misrepresentation that
15 you've heard so much about in the government's case, if you
16 believe them all to be true, if they were made exclusively and
17 intended to only influence the acquiring banks, the merchant
18 banks or the credit card companies, you have to ask yourself
19 whether that satisfies the bank fraud statute. And you'll look
20 at the elements and the answer to that question is going to be,
21 no.

22 A truthful answer is a reasonable bank, a reasonable
23 U.S. issuing bank, with cardholders that travel around the
24 country, not only doesn't care but they have no reason to care.
25 Why? Because they face no risk, no exposure, no loss for

L3MPWEI5

Summation - Mr. Tayback

1 allowing their customers to buy marijuana in states where it's
2 legal on their debit and credit cards. I'm going to explain
3 that.

4 They face no legal exposure. You've heard repeatedly
5 that marijuana remains illegal under federal law, but you've
6 also heard that the federal government isn't even forcing the
7 laws against buying and selling marijuana in states that have
8 legalized it.

9 The Court gave you instruction mid-trial to describe
10 the state of the law on that and, in fact, two witnesses here
11 that you heard from in court, left the courtroom and went right
12 back to California to continue working for Eaze after this
13 trial. Eaze is a business whose entire reason for being is to
14 deliver federally illegal drugs to customers that are willing
15 and able to buy -- to pay for it in California.

16 In fact, we heard that Eaze has expanded. In this
17 trial, we heard that Eaze has expanded into its own dispensary.
18 That civil lawsuit that you heard a little bit about settled,
19 and you heard Mr. Patterson explain that as part of that
20 settlement, is that they bought out the dispensary that they
21 were in litigation with. As a result, they not only deliver
22 it, they produce it. They produce the marijuana product
23 itself. And, of course, as you know, because you have the
24 charges, no one in this case, no witness, no defendant is
25 charged with distributing marijuana or conspiracy to distribute

L3MPWEI5

Summation - Mr. Tayback

1 it or aiding and abetting distributing it.

2 You also have received in evidence some official
3 government records, official government guidance. It's really
4 three memos. One is from the -- two are from the Department of
5 Justice. One was the Cole memo. Then there was a Sessions
6 memo, which said it was rescinding the Cole memo. Remember,
7 Cole was the Obama administration, 2014; Sessions was 2018
8 under President Trump. And then the FinCEN memo, which is the
9 one that matters the most.

10 You should certainly take your time to look through
11 all of them, but the FinCEN memo, Government Exhibit GX4502,
12 applies to banks. It's never been rescinded, and it gives the
13 guidance, the same guidance that comes out of the Cole memo,
14 which says that these banks, essentially they don't have to
15 worry about -- that the government's not going to be
16 prosecuting banks for allowing cardholders to buy marijuana
17 using debit and credit cards.

18 How does it get there? Well, I guess, it identifies
19 eight priorities. The context in which the government will
20 take issue with possible marijuana charges, preventing the
21 distribution to minors, preventing revenue from the sale,
22 preventing diversion from states where it is legal under state
23 law to other states, et cetera. None of these, none of these
24 are implicated by the allegations here, which are that
25 consumers, cardholders are being allowed to use their credit

L3MPWEI5

Summation - Mr. Tayback

1 cards and debit cards to purchase marijuana in states where
2 it's legal. That indicates none of this.

3 In fact, it seems to eliminate some of the concerns
4 here because it reduces, as you heard from the witness
5 Mr. Patterson, one of the concerns was not making this a cash
6 product, not having drivers carry so much cash, allowing better
7 reporting, et cetera.

8 So not only were Mr. Tassone and Mr. Wang -- by the
9 way he spells it with an "A" but he pronounces it with an "O"--
10 but not only are they leaving here to go back to their job at
11 Eaze, but more importantly to the point of this case, the
12 government presented no evidence, no evidence in this case that
13 any bank is being prosecuted or faces the prospect of being
14 prosecuted, for allowing any of its cardholders to engage in
15 any of these transactions.

16 So it's not surprising, then, that Eaze has not been
17 terminated as a merchant on the Visa or MasterCard networks nor
18 by any bank. In fact, you heard the opposite is true. It's
19 business as usual with Circle now processing Eaze's marijuana
20 transactions with bank debit cards over Visa and MasterCard's
21 networks with Eaze's name in plain sight on every transaction
22 records by almost a thousand banks.

23 Now, not only do the banks not face legal exposure,
24 which I've just explained, the banks face no reputational harm.
25 Visa and MasterCard logos and bank logos are available on the

L3MPWEI5

Summation - Mr. Tayback

1 Eaze website. Here's the Eaze website that shows you the bank,
2 different banks that are used, at least on the Eaze website,
3 for what are called ACH transactions, and they continue to
4 allow their logos to be used and displayed in this manner.

5 And, of course, allowing the debit cards to be used,
6 these are a debit card and credit card from Bank of America.
7 This also came in evidence as HAX10018 and HAX10037. They look
8 identical, almost identical, different colors in this case, but
9 the same logos are being used. So there's no difference
10 between using a debit card or credit card.

11 Whatever reputational injury they claim might exist
12 doesn't exist. But, of course, using the debit card to be used
13 as they did with Circle with their brand name and logos is no
14 different from their credit cards. They have no reputational
15 injury, and they haven't even claimed any.

16 They face no economic loss from authorizing marijuana
17 transactions either, and this is an important point. Remember,
18 although their customer agreements -- and these banks all have
19 customer agreements with all their customers that say what you
20 can do and can't do and what the rules are and what you're
21 going to be charged. One thing they don't say is they don't
22 specifically say, none of them, that you can't use them to
23 purchase marijuana.

24 They say you can't use them for illegal gambling in
25 some instances, but what they really say is even if you engage

L3MPWEI5

Summation - Mr. Tayback

1 in an illegal transaction, you're going to have to pay for it.
2 So even if you do what we say you can't do in some general way,
3 buy some illegal product, you're going to have to pay for it.
4 These are both from Citibank and Actors. These are examples.
5 If you do use your account for unlawful transactions, this
6 agreement still applies and you must pay us for those
7 transactions. We may charge your account for such
8 transactions. We will not be liable if you engage in an
9 illegal transaction.

10 And, in fact, no witness, no witness in this case said
11 that there was any risk of loss to a bank from them buying
12 marijuana. James Patterson testified that, in fact, finding a
13 credit card solution was something that was important for Eaze,
14 and that the intent was that dispensaries would get paid, the
15 consumers would get the products they want, and that the banks
16 and intermediaries in between would get the percentages that
17 they take under their agreement: And, in fact, to your
18 knowledge, no one ever did lose money on the credit card
19 purchases correct? Correct.

20 And then, Mr. Steinbach was asked: Have you ever
21 estimated the losses to Citi caused by marijuana sales over a
22 credit card system? The answer: No.

23 Of course, if the banks faced any real economic loss,
24 they would tell their cardholders not to buy marijuana with
25 credit and debit cards. But you will remember that none of

L3MPWEI5

Summation - Mr. Tayback

1 these banks, and as far as we know -- as far as we know from
2 the evidence, no bank actually tells their customers that
3 purchasing marijuana is forbidden. If you look at testimony
4 from Mr. Brown, testimony from Mr. Steinbach, they don't
5 mention it. And that was consistent with the experience of
6 Mr. Whelan, the private investigator, because no one ever told
7 him either.

8 And there's a good reason for the banks not to tell
9 their customers that they can't buy marijuana because they
10 quite reasonably do not want to. They could, but they make the
11 conscious choice not to. Mr. Brown, Mr. Steinbach, no mention.
12 They make the decision not to do so.

13 So in short, the banks face zero risk, zero, for
14 allowing their consumers to use their credit and debit card to
15 buy marijuana. But the upside for them authorizing such
16 transactions when their customers want to buy it, as long as
17 they have the money, is significant. They make incredible sums
18 of money on every swipe, with interest charges, overdraft fees,
19 not to mention the international transaction fee that Bank of
20 America charges for those Circle transactions which go through
21 a merchant bank in the UK.

22 That money all adds up to big dollars for the banks,
23 and this is testimony regarding the bank fees that are charged
24 from Mr. Steinbach and Mr. Brown. And they want to give their
25 customers -- these banks, it's not just about the fees, but

L3MPWEI5

Summation - Mr. Tayback

1 it's also about their competition. Right? They want to please
2 their customers. They want to give their customers the right
3 to use those cards in every way that's desirable for those
4 customers.

5 You heard that from Actors bank, which was a pretty
6 good example. Mr. Brown described how, as a small bank, they
7 needed to be able to provide all the same services that all the
8 big banks provide their customers. That is to say, credit and
9 debit cards that can be used as widely and broadly as anybody
10 else's. So there you have it.

11 For those reasons, no downside, all upside, that tells
12 you everything you need to know about a reasonable banker.
13 Remember, that's the language from that jury instruction, would
14 it influence a reasonable banker's decision to authorize and
15 whether it matters to a reasonable banker if their cardholder's
16 transaction is for marijuana or not. They don't care, and
17 they're happy for their cardholders to buy it, and they're
18 happy for their cardholders to pay for it.

19 But there's a separate reason, also related to
20 materiality, why the government hasn't proven materiality
21 beyond a reasonable doubt. You're being asked to decide what a
22 reasonable banker would do in terms of authorizing a
23 transaction for marijuana. But you've heard and you've seen
24 evidence, and this is GX2201, 2202 and 2301, that there were
25 over 1,300 banks that processed marijuana transactions for Eaze

L3MPWEI5

Summation - Mr. Tayback

1 from 2016 to 2019.

2 And these are the U.S. issuing banks that we're
3 talking about here. These are the ones that issue the credit
4 and debit cards, and there's over 900 that have processed
5 marijuana for Eaze through Circle in 2020. Yet, who did you
6 hear from from the government to prove what a reasonable bank,
7 among these 1,300 plus, would do? Well, you heard from exactly
8 three witnesses, someone from Bank of America, someone from
9 Citibank, and someone from Actors. Those are the best they had
10 to offer. The best. And it's woefully, woefully insufficient
11 to meet the burden. You can't extrapolate from three banks
12 what would be reasonable for an industry with at least 1,300
13 banks, just on the evidence in this record.

14 Now, along these same lines, the government also
15 offered some documents in, without any actual testimony, some
16 records from Wells Fargo and a bank called Cathay. I'm going
17 to talk briefly about that because, as I'll explain, the
18 government will get to speak again, but I will not. So I'm
19 going to anticipate that perhaps they will address those
20 records.

21 There's no evidence about the circumstances that
22 surrounded those documents, but regardless, they're a complete
23 sideshow. If you look at them, they purport to show that these
24 banks, Wells Fargo and Cathay, at some point, did not want to
25 provide banking services to marijuana-related businesses. That

L3MPWEI5

Summation - Mr. Tayback

1 was referred to as MRBs sometime during the testimony.

2 So that means they don't want to provide checking
3 accounts, loans, business operations. They don't want to be
4 the bankers for businesses in the marijuana industry. So what?
5 That has nothing to do with this case. The government would
6 want to confuse you into thinking that if a bank doesn't want
7 to loan money to Eaze or some dispensary, that it also doesn't
8 want its cardholders to buy marijuana from Eaze.

9 But as Mr. Clow testified from the Bank of America,
10 and your common sense would tell you, what a bank might do for
11 a business is different than what its credit card holders would
12 do. That is to say, credit card holders are not MRBs,
13 marijuana-related businesses, right? Correct. They're just
14 not the same.

15 It's like saying because the Bank of America or
16 Citibank would not loan money to a small mom-and-pop souvenir
17 stand in New York that sells "I love New York" shirts, that
18 they would block a cardholder from buying that same shirt from
19 that same mom-and-pop operation. They are two different kinds
20 of decisions. They don't have anything to do with each other.
21 It's a ridiculous argument, and the evidence doesn't suggest
22 anything like that.

23 Now, what to make about the testimony of Visa and
24 MasterCard, which are not banks, as that instruction made
25 clear. So things designed to influence Visa and MasterCard or

L3MPWEI5

Summation - Mr. Tayback

1 the acquiring banks, not within the scope of the federal bank
2 fraud statute, not.

3 But what to make of their testimony. Well, they also
4 say that it's against their policies to allow their cards to be
5 used for marijuana purchases, but like banks, their actions
6 tell a different story.

7 Let's look at Visa, for example. When they met with
8 various stakeholders -- and you can keep this down for a
9 minute. When they met with various stakeholders, including
10 both U.S. issuing bank representatives and merchant bank
11 representatives or acquiring banks, what they talked about
12 wasn't the illegality of marijuana. What they talked about was
13 the size and growth of the marijuana industry.

14 Now you can put it up, Mr. McLeod.

15 It's a staggering slide, a staggering thing to
16 emphasize. It was like Visa was saying, hey, guys, I know our
17 official position is that marijuana is illegal but, you know,
18 holy cow, look at this market opportunity. Look at this
19 business. So use your common sense, ladies and gentlemen.

20 You heard the government ask a number of witnesses
21 during cross-examination, or rather, during their examinations,
22 whether they would process sales of cocaine or heroin. The
23 implication that they were trying to draw is that somehow
24 marijuana is the same as cocaine or heroin. You don't really
25 believe that Visa would have a slide up that says -- talking to

L3MPWEI5

Summation - Mr. Tayback

1 issuing banks, saying how much cocaine and heroin are being
2 sold in the U.S. each year. Of course not. Cocaine and heroin
3 are totally different. They're not legal in any state.
4 They're not an industry. They're not growing.

5 The credit card companies and the banks are
6 businesses. And like any for-profit business, they look for
7 opportunities. They seize opportunities when they see them.
8 So when it comes to deciding what a reasonable banker cares
9 about, money talks, and that slide from Visa shows you what
10 they're talking about. Like Captain Renault in Casablanca,
11 they're shocked, shocked to hear about marijuana, but not
12 really.

13 (Continued on next page)

14
15
16
17
18
19
20
21
22
23
24
25

L3MHWEI6

Summation - Tayback

1 MR. TAYBACK: (Continued) Now, the government made, or
2 I expect they'll make, a point about how banks have reported
3 marijuana merchants to Visa or Mastercard. You'll recall this
4 evidence is all after the fact, so it has nothing to do with
5 what banks consider in authorizing transactions, but in any
6 event, what they do is no more than give themselves plausible
7 deniability. It's like saying it's fine to do it, just don't
8 be obvious about it.

9 So let's look, for example, at a letter that the
10 government introduced that was sent to Mr. Patterson. It's a
11 letter essentially saying, hey, this marijuana merchant -- this
12 is one that the government likes to profile called Hot Robots.
13 That's the name of the proxy company in Europe. They say:
14 Although no action is currently required, it is strongly
15 recommended that your institution investigate the root causes
16 and drivers of the chargebacks with the merchant. It's
17 basically Visa saying: Hey, we have chargebacks for this
18 company, and hey, it's a big nothing. Why don't you look into
19 it.

20 It's actually the domain of the acquiring banks, the
21 European banks in this case that are not covered by the bank
22 fraud statute, to deal with the merchants to determine what
23 they need or don't need or what they should or shouldn't be
24 described as, etc. They all follow the Visa and Mastercard
25 rules. When they don't, when there's a problem, Visa says:

L3MHWEI6

Summation - Tayback

1 Ah, can you talk to them, figure this out? That's the
2 acquiring banks responsibility, that's Visa's responsibility,
3 and it has nothing do with the issuing banks. And that's
4 exactly how these disputes get sorted out, as evidenced by that
5 letter and the testimony you've heard from the various
6 witnesses.

7 Now, how about the banks? Well, we know they don't
8 tell -- we know the issuing banks don't tell their customers to
9 stop buying marijuana on their credit cards. It's not in their
10 agreements with customers, and it's not something they do. But
11 what did they do on the few occasions where they bothered --
12 where it came to their attention that customers were using
13 their credit cards for marijuana? Well, you heard from Bank of
14 America, for example, that they check for marijuana sales on
15 their cards every few months. And you'll recall that a Bank of
16 America witness testified that they process something like 20-
17 to 30,000 card transactions per minute, per minute. It's
18 millions per day, billions over the course of a year was the
19 testimony. And out of all of those transactions, they
20 terminated eight merchants, eight merchants as being marijuana
21 businesses over the course of a year. Eight. And that was all
22 in one three-month period. For the remaining nine months that
23 year, they terminated zero.

24 Does that sound like they were really looking to you
25 to find marijuana purchases? Of course not. That's why not

L3MHWEI6

Summation - Tayback

1 even one bank, not even one, asked their customers whether they
2 bought or if they bought an illegal product when they get the
3 customer on the phone to discuss a transaction. They don't ask
4 because if they ask that question and they get the answer, then
5 they can't plausibly deny it anymore, and that's the name of
6 the game. That's the system that has been created.

7 So let's consider Citibank. You remember, as we
8 discussed, they're a large \$280 million-a-year fraud budget.
9 Well, recall when asked how much was dedicated to marijuana and
10 the answer was zero? That should not be surprising because
11 Citi admitted, Citibank admitted, that the fraud that Citi
12 focuses on is all about making sure that its cardholders aren't
13 ripped off, aren't taken advantage of by fraudsters out there.
14 Citibank doesn't spend a dime on marijuana, to prevent its
15 cardholders from buying marijuana or anything else.

16 What about the evidence that you saw that the European
17 proxy companies for Eaze, dispensaries like Hot Robots or New
18 Opal, were kicked off the credit card networks? Because you
19 didn't hear that evidence. Yes, you did hear that Mastercard
20 told their acquiring banks to block these proxy companies from
21 being on the network when a tip came in that cardholders were
22 using the credit card networks to buy marijuana from Eaze, but
23 what you did not hear and what you heard not at all through
24 this entire trial is that Eaze itself was ever blocked. Eaze
25 wasn't. The credit card companies and the banks knew it was

L3MHWEI6

Summation - Tayback

1 Eaze behind these proxies, and they knew exactly what Eaze was
2 selling, and they've known it for a long time. But all they
3 ever did was knock out a few of these merchants without ever
4 taking any action against Eaze itself. In fact, as you know,
5 Eaze is selling marijuana openly on debit cards to this day.
6 Remember the Citi witness, Michael Steinbach, said he's heard
7 of Eaze, and as he testified here in trial, a year after this
8 case was brought, Mr. Steinbach said: Is Eaze on the block
9 list? No.

10 What do they think Eaze is doing if they're not on the
11 block list? They know they're distributing marijuana. And
12 that's true even though Citi testified they've blocked hundreds
13 of thousands of merchants for a variety of reasons, but the
14 answer is no, they've never blocked Eaze. The banks and credit
15 card companies do just enough to give themselves plausible
16 deniability that they don't know their cards are being used to
17 buy marijuana. They say the right thing, they find a small
18 handful of marijuana companies to block, and they knock some of
19 those proxies out, but they never took any steps to stop Eaze
20 or bar them from the card network.

21 They do nothing to stop the company that's actually
22 distributing marijuana online, actually making the sales
23 through their online app, even though they know precisely who
24 it is. Why? Because they're profitable, they face no risk in
25 authorizing these transactions, and so they have no reason to

L3MHWEI6

Summation - Tayback

1 care. So they don't care. Again, however, that's a little
2 beside the point because the question for bank fraud isn't what
3 the banks do after the fact; remember, it's what they do to
4 authorize a transaction, and the answer to that is nothing. It
5 goes back to the earliest quote I gave you, which is
6 Mr. Steinbach, if I'm Mr. Steinbach and I've got the money, I
7 can buy what I want.

8 Now, I want to turn to another aspect of this case,
9 specific intent to defraud. The government has not proven
10 beyond a reasonable doubt that any defendant had a specific
11 intent to defraud. No one was trying to dupe a U.S.-issuing
12 bank. They were never the focus. At most, the governments
13 evidences shows that this was about giving the acquiring banks
14 what they wanted. Those banks knew and wanted to process
15 marijuana transactions for Eaze and wanted to get around what
16 they viewed as the Visa/Mastercard rules. But Visa and
17 Mastercard are not banks. They're not within the scope of the
18 bank fraud statute, and Visa and Mastercard rules, whatever
19 they may be, they're not the law. Mr. Verdeschi from
20 Mastercard acknowledged that same fact.

21 So what else is wrong with the government's case? To
22 some extent it defies logic. This was a criminal conspiracy
23 where it seems like literally everyone shared everything that
24 was going on with everyone else. Tally up the names of the
25 companies and the people you heard were supposedly

L3MHWEI6

Summation - Tayback

1 coconspirators here: Eaze's entire board of director, senior
2 banking officers, vendors, European banks, service providers
3 like Inovio, a Belgian banker who's sitting in a meeting
4 haphazardly or randomly where they were supposedly discussing
5 some vast conspiracy. Does is that sound like a criminal
6 conspiracy to you?

7 And even the evidence regarding Mr. Akhavan's intent.
8 Let's look at some of what he said through these various chats
9 that were introduced while acting as a liaison, which is how he
10 was described. Although the government, I would note, tried to
11 characterize him, and some of the witnesses did, as being
12 Clearsettle. In fact, they know he's not. You received a
13 document in evidence -- Mr. McLeod, you can bring that up --
14 that shows that Clearsettle organizational chart. His name is
15 nowhere on it. That's Exhibit 1572. He doesn't send anything
16 from a Clearsettle email. He's not Clearsettle. I believe
17 that's been established.

18 But while he was acting as a liaison, he was working
19 as an intermediary between all the people who were trying to
20 facilitate finding a solution for the use of cards to buy
21 marijuana from Eaze. But before that, remember the testimony
22 you heard about this endeavor, which was -- this whole effort
23 to try to get a card solution for Eaze was driven by James
24 Patterson, the CEO. He wanted the company to make more money,
25 he wanted more customers, he wanted growth, and this was his

L3MHWEI6

Summation - Tayback

1 task. This was his mission critical. So Mr. Akhavan was
2 knowledgeable about credit card processing from his other
3 businesses, as you heard, and he provided advice and
4 introductions and attempted to problem solve.

5 Once you guys -- the bottom text: Once you guys are
6 aware of the pros and cons, I'm good with going in whatever
7 direction you want.

8 Mr. Patterson: You viewed Mr. Akhavan's role in this
9 early stage as being a liaison between Eaze and others who
10 could facilitate credit card processing?

11 Conveniently, perhaps, the government ignores through
12 these lengthy chats that go back and forth with different ways
13 to possibly do different things, the government ignores his
14 admonitions not to lie to banks and that the acquiring banks
15 knew exactly what they were doing. "My guys know it's weed, so
16 we don't have those issues," he wrote in an email or text.
17 Mr. Patterson said he took comfort in the fact that Mr. Akhavan
18 said that the banks knew, the European banks knew, what was
19 going on because the European banks were deciding they wanted
20 to process marijuana, and they would take care of it.

21 Now, the government has spent a lot of time pointing
22 out descriptors that don't say "Eaze," but we've seen that
23 those descriptors can be literally anything. As I've
24 discussed, descriptors and merchant names are of limited use
25 and no use at all identifying marijuana transactions. All

L3MHWEI6

Summation - Tayback

1 they're useful for is helping a customer identify, oh, yeah, I
2 bought something there. That's the real purpose, not to trick
3 banks, because the banks, U.S.-issuing banks, don't even
4 consider this information when deciding whether to authorize a
5 transaction. And even if they look at it at all, it's after
6 the transaction is completed, only when the customer calls.

7 But you heard that it was not Mr. Akhavan who advised
8 Eaze to not use Eaze in the descriptor. In fact, there's an
9 email and a chat where Mr. McCarty says: I think Black will
10 have an issue with putting Eaze in there. And you might
11 remember a reference to another outside adviser that Eaze heard
12 from, Jim Black, who had an issue with using Eaze in the
13 descriptor. It was Mr. Akhavan who said: When somebody
14 suggested something like Sinisticks.net, like that has to go.
15 That would make zero sense because it needed to remind the
16 customer of what it was -- in his idea, remind the customer of
17 what it was what they bought.

18 Mr. Akhavan emphasized what was important about a
19 descriptor, which you heard throughout, and you heard the steps
20 that Eaze took to make sure, to make sure, that that was true,
21 including exactly what Circle does today, reminding the
22 customer what to look for on their bank statement. When
23 necessary, making sure they were directed to Eaze's customer
24 service or the appropriate website. Remember what we just saw:
25 Look for Circle Wallet star Eaze. That's basically what Eaze

L3MHWEI6

Summation - Tayback

1 did early on for online billing that I showed you.

2 Now, the evidence here also shows that anytime you
3 heard Mr. Akhavan suggest a descriptor or merchant category
4 code, which is really the role of the merchant bank, the
5 acquiring bank, he suggested something like this: 8099, we
6 used it after testing a lot of MCCs. It's by far the best, and
7 it's also nice that it's medical services not classified
8 elsewhere.

9 Well, what did you hear during the course of this
10 trial? You heard that even in places where recreational
11 marijuana is legal nationally, like Canada, that Mastercard now
12 requires a code that basically identifies it as drug stores or
13 pharmacies, even though recreational marijuana -- this is the
14 exhibit -- recreational marijuana has nothing do with drug
15 stores or pharmacies.

16 So what Mr. Akhavan suggested in the various texts
17 that you saw was actually pretty darn close to what apparently
18 even Mastercard does now. That's not consistent with an intent
19 to defraud.

20 And while we're talking about it, I want you to
21 consider whether the government has actually proven that
22 Mr. Akhavan ever had anything to do with the more outlandish
23 descriptors. They all came into play only after Mr. Hargreaves
24 was arrested and started to work for the government. That was
25 October 2018. He was released in October. He was arrested in

L3MHWEI6

Summation - Tayback

1 late September. And that's when all the descriptors that the
2 government likes to use in this case came to be. Look at the
3 ones they've complained about the most: Absolut soda,
4 Fly2skyshop, Outdoormaxx, all after Mr. Hargreaves returned to
5 Europe. That's when they came to be.

6 So what does that tell you? Well, it tells you,
7 perhaps, that Mr. Hargreaves was back in Europe, barely
8 supervised by the FBI, knowing that he could only save himself,
9 by delivering to the government other crimes and other people,
10 as long as he had the ability to point the finger at somebody
11 else, with every incentive to create a program like this that
12 was more reckless, more inaccurate, as long as he could blame
13 others. And that's precisely what he's done, along with his
14 colleagues, Michele Furlan, that you heard about, and Kate
15 Farmer, who we didn't hear from, but we certainly heard about.

16 There's no evidence that Mr. Akhavan was involved in
17 directing or deciding what Mr. Hargreaves and his people were
18 doing with those companies or descriptors for Eaze after July
19 of 2018. Remember, Mr. Hargreaves came into this operation
20 already having acquired the shell companies that he used as
21 proxies. He already had them. He already had them and their
22 names. Mr. Akhavan was just a client with the banking
23 relationships. It was Mr. Hargreaves, desperate to provide
24 substantial assistance to the U.S. government, and his people
25 who took care of the details, and it's the details that the

L3MHWEI6

Summation - Tayback

1 government is now complaining about, but it's also the details
2 that none of these U.S. banks ever cared about or ever saw.

3 At the end of the day, the government has actually --
4 has the government actually proven beyond a reasonable doubt
5 whether Mr. Akhavan -- what Mr. Akhavan did or what he agreed
6 to with the specific intent to defraud? You did not hear
7 from -- you've seen a lot of texts and chats and numbers on
8 spreadsheets, but you didn't hear from any witness from an
9 acquiring bank, from an ISO, nor from that company Inovio, nor
10 from any of the people that -- many of the people that Eaze
11 supposedly worked with to implement these various solutions.
12 You didn't hear from anybody who reported to even trace any
13 funds to Mr. Akhavan. In fact, what you did hear was quite a
14 bit of speculation about what they must have been doing and why
15 they must have been doing it, but you didn't hear any actual
16 evidence and you didn't see any evidence. And this is the
17 federal government that's prosecuting this case. They can do
18 things. You heard from an FBI agent who was, in fact, a CPA
19 who testified about what the content of documents were that he
20 never had seen before, but he didn't say that he'd done
21 anything to try to trace any of the moneys in this case. That
22 failure of proof beyond a reasonable doubt is the government's
23 burden, no one else's, and certainly not the defendants'.

24 Now, the government will likely argue that you had two
25 witnesses here who actually pled guilty to bank fraud. Well,

L3MHWEI6

Summation - Tayback

1 this was alluded to by Mr. Weigand's counsel. And it's sad but
2 true, but I'm sure you know it from common sense and life
3 experience that there are a lot of reasons why people plead
4 guilty to things even when they're not guilty. Look at this
5 courtroom. It's intimidating. Look at the amount of work that
6 goes into a trial. It's a lot.

7 Now is probably a good time to go back to the jury
8 instruction that you're going to get on credibility of
9 witnesses, something that's your job to determine and yours
10 alone. There's a special paragraph in this jury instruction
11 that's just about what they call "cooperating witnesses," and
12 I'm only going to show you a portion of it, but you'll read the
13 whole thing tomorrow. The law requires the testimony and
14 motives of each such witness to be scrutinized with particular
15 care and caution. So, for example, James Patterson. He has no
16 idea really what federal bank fraud entails, but he did know
17 that he didn't want to run the risk of going to jail. In fact,
18 staying out of jail was his first thought. And he also knows
19 that he has a very large investment in Eaze, and if there's
20 something that he wanted to do was keep Eaze from getting into
21 trouble, to keep hold of the moneys that he believed he would
22 earn from the increased valuation of that company. He didn't
23 want Eaze to go down, just these defendants.

24 Do you think it's really credible when he said he
25 didn't like Mr. Akhavan, when he didn't -- when I asked him, I

L3MHWEI6

Summation - Tayback

1 said: Do you dislike Mr. Akhavan? And he said: No, I don't
2 dislike him. He spent a lot of time rambling, really, about
3 how intimidating he was, his chain smoking, etc.

4 Oliver Hargreaves, the other cooperating witness who
5 knows a thing or two about actual crimes. Remember, he's the
6 guy that was in the extortion plot where they threatened a man
7 by sending menacing photos of a wife and daughter and
8 daughter's boyfriend, intending to be able to communicate the
9 capacity to physically injure them in order to extract money
10 from the person. He was more than happy to plead guilty to
11 anything to get the best deal for himself, and he's the guy who
12 most clearly said that he was knowledgeable about submitting
13 fraudulent application packages. Now, it was mentioned how
14 often he said the word "fraudulent" when he described the
15 application packages. He said it over 60 times during his
16 testimony. In fact, at least four times he apologized when he
17 didn't use it: The application packs -- I'm sorry, the
18 fraudulent application packs.

19 The application pack, sorry, a fraudulent application
20 pack.

21 Discussing application packs -- sorry, they're
22 discussing fraudulent application packs.

23 The point was driven home that he wanted to say
24 "fraudulent," he needed to say "fraudulent," but what did it
25 stand in contrast to? Well, it stood in contrast to the fact

L3MHWEI6

Summation - Tayback

1 that on cross-examination he admitted even he couldn't say when
2 he was first -- when he was first debriefed by the FBI, he
3 didn't mention this offense. It was days before he mentioned
4 the thing about processing credit card payments for marijuana,
5 and it was months before he even mentioned Mr. Akhavan. And
6 even then, two months after his arrest, he didn't remember his
7 name. You'll recall that he didn't use the word "fraudulent"
8 at all.

9 THE COURT: Counsel, you have three minutes left.

10 MR. TAYBACK: Thank you, your Honor.

11 But, ultimately, when he testified here in court on
12 cross-examination that what he did was bank fraud, even he
13 couldn't say it was. He said it was gray. Beyond a reasonable
14 doubt is more than gray, but I'll take it one step further.
15 The entire climate surrounding this credit card industry is
16 incapable of having an intent to defraud. There are
17 transactions described as legal or illegal. These customers
18 are given a sign-up sheet when they log onto the website that
19 describes federal law and state law, and what comes of that?
20 They're then asked -- well, there's a conflict between them,
21 and then what do they have to do to buy something? They have
22 to say, in fact, they're going to abide by the law. What law?

23 Most of the witnesses don't seem to know the answer to
24 that question. The government's theory is it's kind of, sort
25 of legal and kind of, sort of not. No wonder the banks aren't

L3MHWEI6

Summation - Tayback

1 worried about marijuana sales. They hold up a few fig leaves
2 like the empty and vague words in their policies, and yet they
3 continue to process tens of millions of dollars.

4 I won't be able to address you again, but I want you
5 to remember a few things when you hear the government speak in
6 rebuttal. They get to speak last because it's their burden of
7 proof. Because I won't be able to respond, I'd like to ask you
8 this question to keep in mind: Have you heard any evidence
9 that any U.S. bank would have actually declined any of the
10 transactions at issue in this case if the word "Eaze" had
11 appeared in the descriptor, or they could have been influenced
12 by something they've never seen like these application packs or
13 websites or business plans?

14 Before I end, I want to hearken back to what my
15 partner Mr. Burck said to you in opening statements. You
16 cannot and should not believe what the banks say about not
17 knowingly processing marijuana payments on credit and debit
18 cards. It's hypocrisy. It's Captain Renault in "Casablanca."
19 The evidence proves that. They do not care about processing
20 marijuana. Now, they're banks and credit card companies, so
21 you might say, yeah, whatever, but that's the foundation of the
22 government's case. It's the premise of the very specific
23 charge of conspiracy to commit bank fraud. That's the charge,
24 and nothing else. It's your job not to let the government do
25 that. The government has not proven its case beyond a

L3MHWEI6

Rebuttal - Mr. Folly

1 reasonable doubt. It's your duty under the Constitution to
2 make the call that the government would not. The evidence in
3 this case leads to only one conclusion, and that's not guilty
4 as charged.

5 THE COURT: Thank you very much.

6 Now, ladies and gentlemen, we'll hear finally from the
7 government.

8 MR. FOLLY: Your Honor, may I just have two minutes?

9 THE COURT: Pardon?

10 MR. FOLLY: May I just have two minutes, your Honor?
11 Thank you.

12 THE COURT: Yes.

13 MR. FOLLY: May I proceed, your Honor?

14 THE COURT: Yes.

15 MR. FOLLY: Ladies and gentlemen, as I listened to the
16 arguments that these lawyers made for the last several hours, I
17 almost forgot who was on trial in this case. Let's be clear.
18 Visa, not on trial. Mastercard, not on trial. The issuing
19 banks, again, they are not on trial. These two men, Ruben
20 Weigand and Ray Akhavan, that is who is on trial.

21 And I listened to these arguments, all about Visa, all
22 about Mastercard, all about the issuing banks, nothing about
23 the clear words and the clear actions that these two men took
24 and made from 2016 through 2019. That's what this case is
25 about. It's about the evidence. It's about the emails. It's

L3MHWEI6

Rebuttal - Mr. Folly

1 about the chats. It's about the meetings. Poof, gone. It's
2 like they didn't even happen. It's like they didn't exist.
3 It's like we were magically transported to the land of
4 Hollywood, to the land of "Casablanca," to Humphrey Bogart.

5 Ladies and gentlemen, this is not Hollywood. This is
6 the real world. You heard real evidence, real testimony at
7 this trial. That, ladies and gentlemen, is the only thing that
8 matters during your deliberations, not the arguments of any of
9 the lawyers, not "Casablanca," not Hollywood, the real
10 evidence.

11 Now, I'm not going to have time to respond to each of
12 the arguments that the defense lawyers made, but I don't need
13 to do that. You heard from Ms. La Morte earlier. You've been
14 attentive throughout this entire trial. You saw the witnesses.
15 You saw all the evidence. So I don't need to go back through
16 it all. I'm only going to respond to some of the main
17 arguments that the defense lawyers made.

18 Before I do that, I just want to remind you, the
19 defendants in this case, they have no burden. They don't have
20 to make any arguments whatsoever. The burden is always on the
21 government, and we've met that burden in this case. But when
22 the defendants choose to make arguments, they choose to put on
23 witnesses, you are entitled to scrutinize those arguments, to
24 scrutinize that testimony. And ask yourselves: Does it make
25 sense? Does it line up with all the other evidence that you

L3MHWEI6

Rebuttal - Mr. Folly

1 heard and saw in this case? It doesn't. It's clear that it
2 doesn't. Those argument that you heard today, that you heard
3 through cross-examination, nothing but a distraction from the
4 real evidence that matters in this case.

5 So what are those main arguments? Let's start with
6 the biggest argument of all, this argument on and on about
7 materiality. This theory that the years and years of lies and
8 misrepresentations that these defendants made to the banks in
9 the United States who approved over \$100 million in
10 transactions didn't matter, that the banks didn't care about
11 getting lied to, about the fact that those transactions really
12 involved illegal activity. "Casablanca," hear no evil, see no
13 evil, all that nonsense, ladies and gentlemen, of course it
14 mattered to the banks. Of course it did.

15 The fake merchants, the fake websites, the fake MCCs,
16 the fake merchant locations, the fake descriptors -- they claim
17 that a reasonable banker would not care about being lied to
18 repeatedly about those things, and that if the banker, the
19 reasonable -- the so-called reasonable banker actually knew
20 that those transactions were disguised marijuana transactions,
21 which are illegal under federal law, it would not be capable of
22 influencing that banker's decision about whether to process the
23 transactions. That's the argument. Ladies and gentlemen, that
24 argument, it's ridiculous on its face. There is nothing
25 reasonable about that whatsoever. There is nothing reasonable

L3MHWEI6

Rebuttal - Mr. Folly

1 about a banker in the United States not caring that they were
2 getting repeatedly lied to about the nature of the transactions
3 which were actually disguised for illegal purchases.

4 This is an objective test. It's about what a
5 reasonable banker, how that reasonable banker, would view that
6 information. And you didn't need to hear from any of the
7 bankers who came into this courtroom and testified in front of
8 you to reach that conclusion. Of course that information would
9 matter to a reasonable banker. So let's go through that in
10 just a little more detail.

11 Think about what you would have to believe to conclude
12 that the defendants had it right, that this information didn't
13 matter. All those witnesses that came in here, the witnesses
14 from the banks, according to the defendants, they lied. They
15 got on the witness stand and they lied to you. They perjured
16 themselves when they said they would not knowingly approve
17 these transactions. According to the defendants, that's a lie.

18 That makes no sense. Those witnesses have no reason
19 at all to lie to you. None whatsoever. They weren't members
20 of this conspiracy. They had nothing to do with this at all.
21 They're just doing their jobs. And they were asked to come to
22 court, and they testified truthfully when they said that the
23 banks would not knowingly approve these transactions. They had
24 no reason to lie.

25 Think about all the ways those witnesses were backed

L3MHWEI6

Rebuttal - Mr. Folly

1 up by all the other evidence in this case. You saw the rules.
2 The rules clearly state: no illegal transactions. Marijuana
3 transactions are illegal under federal law. It does not matter
4 that they are legal under state law. That's just a
5 distraction. They're illegal under federal law, so the banks
6 clearly had a reason to care about that.

7 You saw the rules from Visa and Mastercard, same
8 thing: no illegal transactions. And these banks, these banks
9 have every reason in the world to play by Visa and Mastercard's
10 rules. They do not want to get kicked off the network. That
11 would be devastating. They would go out of business. So
12 they're incentivized to play by the rules that Visa and
13 Mastercard set. And, again, those rules all make sense because
14 marijuana transactions in the United States, they're still
15 illegal.

16 Now I want to focus on one of the arguments, again, on
17 this point that the banks don't care. One of the arguments you
18 heard again and again from the defendants is this: The banks
19 make money on these transactions, so they don't care. Really?
20 They make money so they don't care that these are illegal
21 transactions? I heard that again and again on
22 cross-examination during the trial, that these banks are making
23 money on these transactions. It made no sense then; it still
24 makes no sense now. There's a lot of ways these banks could
25 make more money in the short term by engaging in illegal

L3MHWEI6

Rebuttal - Mr. Folly

1 activity. They could steal a little bit of money out of their
2 customers' accounts each month. If they only stole a little
3 bit, they might not even get caught for a while. They could
4 let drug dealers launder money through accounts at their banks.
5 Maybe they wouldn't get caught. Ladies and gentlemen, there's
6 lots of ways banks could make more money by letting illegal
7 activity happen at their banks. That's not the point. The
8 point is there's a risk to those banks doing that. There's a
9 risk to them knowingly being involved with illegal
10 transactions. That's the point here.

11 Ladies and gentlemen, again, your common sense tells
12 you that, but you know who else told you that at this trial?
13 Him. Ray Akhavan. You saw his words in the emails, in the
14 chats. That was literally the entire purpose of this
15 operation. It's why Eaze had to hire someone like Ray Akhavan
16 and Ruben Weigand is because the banks actually do care. So
17 the only way you can pull this off is if you have someone who
18 can put in place a sophisticated network involving lies at
19 every level. That's the only way this works.

20 If we could just go to the first slide that has
21 Government Exhibit 423. It's an email. It's an email from Ray
22 Akhavan, and in that email he says it's just not worth the risk
23 for a bank when there are so many other high-risk businesses
24 which don't pose the legal issues for them. It's not worth it.
25 It's not worth it for U.S. banks. Ray Akhavan told you that.

L3MHWEI6

Rebuttal - Mr. Folly

1 You didn't have to hear it from the U.S. bank witnesses who
2 came in and told you the same thing, because Ray told you right
3 there, his words in 2016 while he was right smack dab in the
4 middle of committing the very crime that we are here
5 discussing.

6 It reminds me of a famous quote: "When someone shows
7 you their true colors, don't try to repaint them." Ray
8 Akhavan, Ruben Weigand, they showed you their colors in the
9 middle of this scheme as it was happening. Look carefully at
10 their words they used while the scheme was happening because
11 now that we're here in 2021, they're trying to paint a very
12 different picture than their clear words did in those emails
13 and those chats that you saw.

14 One other point I want to hit very quickly. You heard
15 arguments about this thing called the Cole Memo and these other
16 law enforcement memos. Another total distraction, ladies and
17 gentlemen. The defendants say under the Cole Memo the risk of
18 prosecution for recreational pot is low. What they want you to
19 take away from that is that means the banks don't care about
20 being lied to, about the fact that they're processing illegal
21 transactions. Ladies and gentlemen, this argument makes no
22 sense whatsoever for the following reason: For the banks to
23 understand and evaluate the risk that they are facing, they
24 need and depend on truthful information. That's the only way
25 that they can evaluate what risk they are being exposed to by

L3MHWEI6

Rebuttal - Mr. Folly

1 processing illegal transactions. And the defendants in their
2 scheme completely took that away from the banks. They made it
3 impossible for them to evaluate whether they were exposed to
4 any risk, such as the risk that's set forth in these memos.

5 And one of the other points, if you look at one of the
6 memos that they showed you, one of the very red flags that's
7 set forth there, disguising marijuana transactions, just like
8 the defendants did in this case. That is a specific red flag
9 set forth in one of those memos. Ladies and gentlemen, the
10 real point, though, on those memos is that it's about denying
11 the banks the ability to evaluate the risk. If you lie to
12 them, they cannot appropriately evaluate that risk. Just think
13 about the scale of this. Over \$100 million in disguised
14 illegal transactions, that's what you saw at this trial.
15 That's enormous. That's what the defendants exposed these
16 banks to.

17 Ladies and gentlemen, the other thing you heard
18 arguments about, some big global conspiracy between the banks
19 and the credit card companies, Visa and Mastercard. Everyone's
20 in on this big conspiracy to let all these transactions happen.
21 Ladies and gentlemen, that argument is totally off the wall.
22 It's totally inconsistent with three weeks of testimony you've
23 heard at this trial. Bank witnesses came and testified.
24 Credit card witnesses came and testified. And you know what
25 they all had in common? Not a single one of them testified

L3MHWEI6

Rebuttal - Mr. Folly

1 about anything connected to some big conspiracy that they're
2 all supposedly in on to let these transactions happen because,
3 according to the defendants, there's just so much money there
4 to be made, so they're all in it together. And they designed
5 the entire system just so this could happen, according to the
6 defendants.

7 Then you heard things about MCC codes. You heard,
8 well, there's no MCC code for marijuana, like that was some big
9 gotcha moment. Again, ladies and gentlemen, there's no MCC
10 code for marijuana because it's completely illegal under
11 federal law. There's no MCC codes for a lot of things that are
12 completely illegal under federal law. There's no MCC code for
13 any of the other illegal drugs, as you heard at this trial.
14 That's common sense.

15 So then you heard arguments, well, it's not
16 specifically listed in the rules; doesn't specifically
17 reference marijuana transactions. Again, ladies and gentlemen,
18 it doesn't reference a lot of illegal activities. You saw
19 that. It doesn't reference murder for hire. It doesn't
20 reference human trafficking. It doesn't reference the sale of
21 illegal firearms. It doesn't specifically enumerate the
22 illegal crimes. That's all that that shows. Nothing else.

23 The one other point on MCC codes, this was a miscoding
24 scheme. They chose codes like freight carrier, like clock
25 jewelry. Having a code for marijuana would have done nothing

L3MHWEI6

Rebuttal - Mr. Folly

1 here. The defendants were intentionally miscoding the
2 transactions to make them look like things that were completely
3 different than the sale of marijuana.

4 One last point. You also heard a line of argument
5 that nobody actually blocked Eaze, like Eaze.com, as a
6 merchant. Again, ladies and gentlemen, I heard that line of
7 cross-examination at trial. It made no sense then and makes no
8 sense now. Eaze.com was the website where the customers were
9 making the purchases. It was not the merchant. The merchant
10 was all those fake merchants that you heard about at this
11 trial, and those are the same merchants -- remember, Visa found
12 out about this scheme. Despite all the deception, they found
13 out about it, and so did Mastercard. They found out about the
14 fake merchants that were being used for the Eaze.com purchases,
15 and they shut them down. So all this talk about a big global
16 conspiracy -- you know, we heard reminders about actions
17 speaking louder than words. Look at Visa and Mastercard's
18 actions. They shut this down when they found out about it.
19 When they found out about the fake merchants that were getting
20 used for these marijuana transactions, they took action, and
21 they shut it down.

22 You also heard arguments about Circle and the fact
23 that Circle is being used for Eaze transactions, 2020, 2021.
24 Again, nothing to do with these defendants. Circle is not on
25 trial. Nobody's even up here saying or suggesting that Circle

L3MHWEI6

Rebuttal - Mr. Folly

1 is doing things in a legal way. No one's saying that. That's
2 not the point. There was some sort of argument that like using
3 Circle in this way is just normal; it's like a normal debit
4 card transaction. Let me ask you something. When you go and
5 buy groceries, do you use cryptocurrency to get your groceries?
6 Of course not. So this isn't normal. It's certainly not
7 normal. But what it isn't, and this is important, it is not
8 deceptive in the same way that these defendants' scheme was.
9 Because you know why? These transactions do clearly
10 communicate who the merchant is. These transactions do not
11 have intentionally misleading MCC codes. And the reason that's
12 important is because that still gives the bank the opportunity
13 to make the risk assessment. If they figure out that these
14 transactions are for the purchase of marijuana, they can make
15 the risk assessment. The defendants took that away from the
16 banks because they had a massive scheme to hide that these were
17 marijuana transactions. That's not what Circle's doing.

18 But not only that, it's apples and oranges. It is a
19 purchase -- and you only heard about this on
20 cross-examination -- it's a purchase of a cryptocurrency, and
21 then the cryptocurrency is used to purchase the marijuana
22 products. What the banks think about that, you don't have
23 testimony about that at this trial. All you do have, however,
24 Visa looking into the Circle-Eaze relationship. It's of
25 concern to them. Bank of America, same thing. So even Circle,

L3MHWEI6

Rebuttal - Mr. Folly

1 even when transparent, that is still raising a concern with the
2 banks.

3 There was another argument you heard that at the very
4 moment of transaction, a single transaction, even if the
5 information had been truthful, the banks would not have stopped
6 it. Ladies and gentlemen, that is a total misleading
7 distraction. This scheme is not about a single transaction.
8 It's about thousands of transactions. Eaze needed a solution
9 so that every single day their customers could keep swiping,
10 could keep making purchases. That's what the defendants were
11 hired to do, put in place a system that would continually,
12 through misrepresentations and lies, allow the Eaze customers
13 to keep making purchases. So it's not about a single
14 transaction.

15 What you learned in this case is even despite
16 deceptive information, this scheme was detected, and when that
17 happens, it gets shut down. So this argument that if they had
18 used truthful information, that everything would have just gone
19 smoothly and that this would have never been detected or shut
20 down makes no sense. It's totally inconsistent with what you
21 saw in this very case, which is that even with all the
22 deception, people figured this out, and they took steps to shut
23 it down, because they cared about it. They didn't want it
24 happening.

25 Ladies and gentlemen, another thing you heard, you

L3MHWEI6

Rebuttal - Mr. Folly

1 heard it pressed by both defendants, is that these cooperators,
2 Oliver Hargreaves and Jim Patterson, can't be trusted. They
3 even went so far as to say these cooperators took it upon
4 themselves to plead guilty to crimes that they didn't commit.
5 Jim Patterson, the former CEO of Eaze, they want you to believe
6 that Jim Patterson just took it upon himself, decided, hey,
7 this would be fun. I'll come into court and plead guilty for a
8 federal felony that I didn't commit. That's the theory.
9 Ladies and gentlemen, you saw so much other evidence in this
10 case that shows you that is absolutely not true. You saw
11 emails. You saw text messages. You saw so much other evidence
12 of that.

13 And I want to test that out. I want to test out this
14 theory about Jim Patterson and Oliver Hargreaves, you can't
15 believe a word that those cooperators told you. And you know
16 why that argument with as made. Because if you believe those
17 cooperators, this case is over. They told you from the inside
18 about this criminal conspiracy, about meetings they attended
19 with both defendants, about meetings in which they hatched this
20 very conspiracy. They drew it out on a whiteboard, meetings
21 where Ray Akhavan was bragging about being under investigation
22 by all the three-letter agencies, where he was saying that the
23 risk to him was up to a 10. So if you believe the cooperators,
24 we're done here.

25 So let's test this out. I want you to just quickly

L3MHWEI6

Rebuttal - Mr. Folly

1 imagine something. We're all in this room, 26th floor of the
2 courthouse, and in comes Oliver Hargreaves, and he says: We've
3 got to get out of here. There's a fire in this courthouse.
4 OK. That's a matter of genuine importance to each and every
5 one of us. Would you hesitate to get out of your seat and
6 leave the courtroom? You might, at first you might. You've
7 heard all kinds of things about Oliver Hargreaves, his
8 involvement in extortion, the fact that he lied to banks, just
9 like these two defendants. That's the business that he was in,
10 the lying to banks business. So you might hesitate initially.

11 But then after that, Jim Patterson comes in and says
12 the same thing: There's a fire in the courthouse. We need to
13 get out of here. OK. You still might hesitate just a little.
14 But then you're going to hear from John Wang. He comes in;
15 same thing. Darcy Cozzetto, she comes in; same thing. Michael
16 Tassone, he comes in; same thing. Then you're starting to hear
17 fire trucks. They're getting closer. They're loud. Then
18 you're starting to feel the heat and see the smoke. It's
19 pouring into the courtroom.

20 Ladies and gentlemen, you're not going to dismiss the
21 totality of everything you're seeing and hearing at that point.
22 That is what corroborating evidence is. And here's the
23 important thing. You're not going to dismiss that totality
24 just because you heard about it first from Oliver Hargreaves.
25 You're not going to dismiss that. The evidence at this

L3MHWEI6

Rebuttal - Mr. Folly

1 trial -- the chats that you saw, the emails that you saw, chats
2 just between the insiders of this scheme, Ruben, Ray, chats
3 that they thought would never see the light of day, chats on
4 Telegram, references to chats on Wickr, emails on ProtonMail --
5 you heard and saw all that evidence. That's not cherry-picked
6 evidence, ladies and gentlemen. That's fire corroboration.
7 That's corroboration through the defendants' own words in the
8 middle of the conspiracy that they were participating in.
9 That's what that is.

10 Just think about it. You saw so much corroboration
11 throughout this trial. You heard from so many witnesses who,
12 frankly, didn't have a lot to do with each other. You have
13 Oliver Hargreaves over in Europe. That's where his focus is.
14 That's where his main focus is. Then you had the CEO, former
15 CEO, of Eaze in the United States. He's not one of these
16 insiders like Ruben, Ray, or Hargreaves, but he's telling you
17 the same thing. Then it's all corroborated in all of the chats
18 and emails and other evidence that you saw at this trial. That
19 is fire corroboration.

20 These witnesses, you do not need to believe a single
21 one of them without looking at the corroboration. You don't
22 have to take their word for anything that happened in this
23 case. Nothing. You don't have to take a single witness' word
24 for anything that happened in this case. They are all
25 independently corroborated. Each of them corroborates each

L3MHWEI6

Rebuttal - Mr. Folly

1 other, and then the chats and the emails further corroborate
2 them.

3 Now, ladies and gentlemen, I want to talk briefly
4 about Ruben Weigand. You heard some arguments that Ruben
5 Weigand, who was over in Europe, because that's where he lived,
6 right, did not have any intent with respect to banks in the
7 United States. That was the basic argument. He was completely
8 oblivious that anything was going on in the United States
9 connected to those banks. That argument makes zero sense for
10 many reasons.

11 First of all, think about the fact Ruben comes to the
12 United States twice in a two-month span to attend meetings
13 about the Eaze scheme. So clearly he's focused on the United
14 States. Think about it. How many times do you get on a plane
15 and travel across the world twice in a two-month span for
16 business meetings for something that you're not focused on?
17 That makes no sense whatsoever. He was focused on this Eaze
18 scheme. He came here. He attended the meetings with Ray, with
19 Hargreaves, with Jim Patterson. He came. He attended those
20 meetings. He was focused.

21 The bigger point here, ladies and gentlemen, it's
22 about the very purpose of this scheme. The scheme is aimed at
23 getting the money from Eaze's customers, their bank accounts,
24 their credit and debit card accounts, getting that money out of
25 those accounts through lies. That's the whole purpose of this

L3MHWEI6

Rebuttal - Mr. Folly

1 scheme is to get the money out of the customers' accounts in
2 the United States, to get the money out of those bank accounts
3 through lies. That's the point of the scheme. And ladies and
4 gentlemen, the lies, those lies do not have to be directly
5 addressed to those issuing banks in the United States as long
6 as the lies are what induces those banks to part with the
7 money.

8 So, ladies and gentlemen, this talk about lies that
9 were going to Visa and Mastercard, through the Visa and
10 Mastercard network, those lies mattered. The purpose of those
11 lies was to get the money from the accounts of the customers in
12 the United States. That was the purpose of those lies. It
13 doesn't matter whether Ruben in those chats is talking about
14 the rules of those banks. That doesn't matter. You're going
15 to hear the law from Judge Rakoff, and you have to follow the
16 law that Rakoff gives you. And he's not going to tell you that
17 there's a rule, a law, an element, that requires that there be
18 chats about rules pertaining to the issuing banks. No, that's
19 not the law. What matters is that misrepresentations were used
20 to induce those U.S. banks into parting with that money, and
21 ladies and gentlemen, you heard that again and again. That's
22 what the whole scheme was about. That's the point of the
23 entire scheme.

24 Ladies and gentlemen, you also heard arguments about
25 documents that were found on Ruben Weigand's computer,

L3MHWEI6

Rebuttal - Mr. Folly

1 documents that directly tie him to that scheme. And it's not
2 surprising you heard about those documents because that
3 evidence is devastating. It's right off his computer,
4 documents that directly tie him into this scheme. So one of
5 the arguments you heard was that those documents were all
6 placed on the laptop in 2020.

7 Can we pull up the slide.

8 Ladies and gentlemen, just focus on this here. Look
9 on the right column. That's the "Date Added" column. July 12,
10 2018. May 29, 2018. April 23, 2018, that's the Hot Robot
11 Settlego document. July 12, 2018, International Standard,
12 another one of those fake merchants. Right below that,
13 July 12, 2018, Linebeck, Ltd. Further down the page, Lorry
14 Ltd. Application, Kalixa_rw, Ruben Weigand. April 18, 2018.
15 Ladies and gentlemen, 2018, in the middle of the conspiracy,
16 those documents were on his computer because he was directly
17 involved in this conspiracy at the time that it was going on.

18 Now, you also heard arguments about the Euprocessing
19 email address. I don't want to spend a lot of time on that.
20 Ladies and gentlemen, there's no question that Ruben Weigand at
21 some point used that email address. There's no question he
22 controlled Euprocessing. There's evidence that other people
23 used the email address. OK. Again, it doesn't matter. You're
24 going to hear the law from Judge Rakoff. There's no
25 requirement that Ruben Weigand sent every single email from

L3MHWEI6

Rebuttal - Mr. Folly

1 Euprocessing. What you have in this case is so much other
2 evidence, put the email address completely to the side. Put it
3 over here and look at all the other evidence that's still left:
4 the Telegram chats that have Ruben Weigand's name on them, the
5 emails that he signs with his own name, emails from the email
6 address that even counsel concedes is his email address, the
7 testimony you heard from multiple witnesses at this trial about
8 his direct involvement in this scheme, messages even from Ray
9 where Ray says Ruben has agreed to be actively involved, Ruben
10 is going to be interfacing with the banks. What better
11 evidence, what better evidence than Ray's words during the
12 scheme, while it was happening, about Ruben Weigand, his
13 coconspirator in the scheme? So don't get distracted by the
14 Euprocessing email address. Put it to the side and look at all
15 of the other evidence against Ruben in this case, all of it.
16 Put it all together, and that's what shows you he's guilty.

17 Ladies and gentlemen, very briefly, you heard an
18 absurd argument that Ray Akhavan did not have the intent to
19 deceive, did not have the intent, ladies and gentlemen.

20 (Continued on next page)

21
22
23
24
25

L3MPWEI7

Rebuttal Summation - Mr. Folly

1 MR. FOLLY: He was the leader. Ray Akhavan was the
2 leader. You heard that again and again and again from all of
3 the different witnesses, Hargreaves, Patterson, Darcy, John
4 Wang. They all told you again and again, Ray Akhavan was the
5 leader.

6 And not only that, look back at those e-mails. Look
7 carefully at those e-mails. Ray Akhavan is explaining to the
8 Eaze team how to commit the fraud successfully, how to pull it
9 off, the importance of customer service, the importance of
10 answering the phone and not indicating that it's Eaze, the
11 importance of the pixel redirects so that if Visa and
12 MasterCard showed at the website, they don't connect it to
13 Eaze. That's Ray Akhavan explaining to everyone else how to
14 get away with this scheme.

15 That's Ray Akhavan. He explains that the concern
16 about chargebacks is that Eaze customers will call their bank,
17 banks like Wells Fargo, and they will reveal the scheme that
18 this is really marijuana. Why does that matter? Because
19 banks, like Wells Fargo, care and they pick up the phone and
20 they call Visa and MasterCard and that results in this getting
21 shut down. So just look at Ray Akhavan's own words in the
22 middle of this scheme. Nothing gives you a better sense,
23 ladies and gentlemen, of his knowledge and intent.

24 Ladies and gentlemen, you also heard about reasonable
25 doubt. There's nothing magical about reasonable doubt. We

L3MPWEI7

Rebuttal Summation - Mr. Folly

1 have met that burden in this case. That is the same burden
2 that has been applied in every single criminal trial, every
3 single criminal trial in this nation since the Constitution was
4 ratified. Reasonable doubt, there's nothing magical about it,
5 and we've met it in this case.

6 Ladies and gentlemen, I'm going to sit down in just a
7 minute. You heard and saw a mountain of evidence throughout
8 this trial, three weeks of testimony, documents. You heard
9 from bank witnesses. You heard from insiders. You saw the
10 defendant's own words in chats and in e-mails right in the
11 middle of the scheme.

12 I'll go back to where I started. MasterCard, Visa,
13 the banks, none of them are on trial. The defendants are on
14 trial for the lies that they told in order to induce banks to
15 part with their money. They are on trial. This is not a case
16 about marijuana. It's not a case about cryptocurrency. It's a
17 case about the lies that these defendants passed to the banks
18 right here in the United States, that they passed to Visa and
19 MasterCard in order to get those banks, once again, to part
20 with their money, lies that enabled the processing of over \$150
21 million in transactions.

22 Now, right here, in Federal Court, it's time for these
23 defendants to be held accountable for those lies. They tricked
24 the banks. They tricked Visa and MasterCard. Do not let the
25 defendants trick you. There is only one verdict that is

L3MPWEI7

1 consistent with all of the evidence in this case. These two
2 defendants are guilty.

3 THE COURT: Thank you very much.

4 All right. Ladies and gentlemen, there's an old
5 saying, it ain't over until the fat lady sings. I'm the fat
6 lady in this case, because tomorrow I will be giving you my
7 instructions of law, and then it will be your case to
8 deliberate upon. So we'll start promptly at 9:45. My
9 instructions will only take about a half hour, and then the
10 case will be in your good hands. So have a good evening, and
11 we'll see you tomorrow morning at 9:45.

12 (Jury not present)

13 THE COURT: Please be seated.

14 So let me congratulate all counsel on excellent
15 summations or, as Mr. Tayback would say: This could be the
16 start of a beautiful friendship.

17 Anything anyone needs to raise with the Court?

18 MS. DEININGER: One thing, your Honor. Based on the
19 defendant's closing, the government had previously requested
20 language in the jury instruction about the fact that it was --
21 it doesn't matter whether the U.S. issuing banks could have
22 uncovered the truth if they had done additional due diligence,
23 and based on these closings, we would like to renew that
24 request. There was an extensive amount of discussion of things
25 that the banks could have done or might have done if they would

L3MPWEI7

1 have been reasonable, and we think that instruction is
2 appropriate in light of that.

3 MR. TAYBACK: May I be heard?

4 THE COURT: No, I think the -- you're confusing two
5 different concepts. I ruled at the start of the trial that the
6 banks' alleged negligence is neither here nor there for any of
7 the issues. I think it was in the particular context of
8 materiality, but any of the issues. It's a different argument
9 that defense counsel has been making from the beginning, which
10 is that they, according to defense's position, they purposely
11 chose not to inquire.

12 It wasn't that they were being negligent. It wasn't
13 that they weren't exercising due care, in the defense view of
14 it, is they intentionally did nothing to follow up.

15 Now, the government gave some excellent arguments on
16 the other side of that; so the jury has both sides to consider,
17 but I don't think there's any further instruction that's
18 necessary.

19 MS. LA MORTE: Your Honor, one more. In the closing,
20 I believe it was stated -- I don't have the exact wording in
21 front of me, obviously, but with respect to the law of bank
22 fraud, the lies were incapable of influencing the bank at the
23 time of authorization, as opposed to afterwards. To the extent
24 that that was given as a recitation of the law, that's not
25 accurate. The law doesn't require --

L3MPWEI7

1 THE COURT: No, I agree, but where do you --

2 MS. LA MORTE: I believe that was in Mr. Tayback's --

3 THE COURT: No, I --

4 MS. LA MORTE: Sorry.

5 THE COURT: I do think he said something along those
6 lines and that was responded to in the rebuttal, where the
7 point was made that we're not talking about just one time,
8 we're talking about thousands of times.

9 MS. LA MORTE: Right.

10 THE COURT: But I'm not sure where in the instructions
11 I need to change anything.

12 MS. LA MORTE: No, the concern was just to the extent
13 that -- and admittedly, I just don't remember how exactly it
14 was presented, but to the extent that that was presented as a
15 recitation of the law, then that is the government's concern.
16 As a factual matter, we responded, but we didn't respond by
17 saying that the law doesn't require that capable of
18 influencing --

19 THE COURT: I don't recall Mr. Tayback's presenting it
20 as the law, but if you want to look over the transcript, if he
21 did present it as the law, then we might have to have a
22 curative instruction, but that was not my memory of how he put
23 it.

24 MS. LA MORTE: Okay.

25 MR. TAYBACK: I did try to use the actual language

L3MPWEI7

1 from your instruction; so I put the instruction up on the
2 screen.

3 THE COURT: All right. So we'll all look at the
4 transcript and see what it says.

5 MR. TAYBACK: Thank you.

6 THE COURT: Okay. I will see you tomorrow. I don't
7 think you need to come in early. We'll see you at 9:45.

8 MS. LA MORTE: Thank you.

9 MR. TAYBACK: Your Honor, I do have one question,
10 which is during deliberations, what is your practice with
11 respect to --

12 THE COURT: Oh, yes. Thank you very much. During
13 deliberations, there must always be in this courtroom at least
14 one lawyer from each party, who is authorized to respond to a
15 jury question so that I don't have to go looking for people to
16 respond to jury notes. You can shift people, but it has to be
17 at least one at any time.

18 The only exception is between 12:45 and 1:45, when the
19 jury will be having their lunch, and you're excused for lunch
20 during that time.

21 MR. TAYBACK: And how about with respect to my client,
22 your Honor?

23 THE COURT: So he, of course, has the right to be
24 present, but if he wants to waive that right, after consulting
25 with you, usually notes are more about legal questions, you

L3MPWEI7

1 know, than they are about anything else, but it's totally up to
2 you and him. I'm happy either way.

3 MR. TAYBACK: Would he then be just brought over if
4 there's just a verdict; is that the idea?

5 THE COURT: I'm sorry?

6 MR. TAYBACK: Would he then be brought over from the
7 MCC if there's a verdict?

8 THE COURT: Oh, absolutely. Actually --

9 MR. TAYBACK: That raises a timing issue.

10 THE COURT: Yes, because that could take some time,
11 and we don't want to leave the jury just hanging there for half
12 an hour.

13 MR. TAYBACK: The marshals say that he actually comes
14 over to court and is in the --

15 MARSHAL: He comes downstairs, your Honor. We'll get
16 him in the morning and then if you need him, just call me and
17 we'll bring him right up.

18 THE COURT: So in those circumstances, if I called
19 you, how long would it take?

20 MARSHAL: A minute, sir.

21 THE COURT: Oh, okay. So that's fine.

22 MR. TAYBACK: Thank you.

23 (Adjourned to 9:45 a.m., March 28, 2021)
24
25